

Volume: 1
Pages: 1-64
Exhibit: 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE



Case No. 15-CV-00280-PB

- - - - - x

JONATHAN LEITE,

Plaintiff,

v.

MATTHEW GOULET, et al.,

Defendants.

- - - - - x

DEPOSITION OF MICHAEL COTE

September 20, 2017

12:01 p.m. to 1:57 p.m.

NORTHERN NH CORRECTIONAL FACILITY

138 East Milan Road

Berlin, New Hampshire

Reporter: Celeste A. Quimby, LCR No. 17

		Page 2
1	I N D E X	
2		
3	WITNESS: Michael Cote	
4		
5	EXAMINATION:	Page
6	By Mr. King	4
7		
8		
9		
10	EXHIBITS FOR IDENTIFICATION:	
11	Cote Description	Page
12	Exhibit 1 State police investigative file	6
13		
14		
15		
16		
17		
18		
19		
20		
21	(Exhibit scanned/e-mailed to counsel; original returned to Mr. King.)	
22		
23		

		Page 3
1	A P P E A R A N C E S	
2	For the Plaintiff:	
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22		
23		
STIPULATIONS		
It is agreed that the deposition shall be taken in the first instance in stenotype and when transcribed may be used for all purposes for which depositions are competent under the Federal Rules of Civil Procedure.		
Notice, filing, caption, and all other formalities are waived. All objections except as to form are reserved until the time of trial.		
It is further agreed that if the deposition is not signed within thirty (30) days after submission to counsel, the signature of the deponent is waived.		

		Page 4
1	MICHAEL COTE	
2	having been duly sworn by the reporter,	
3	was deposed and testified as follows:	
4	EXAMINATION	
5	BY MR. KING:	
6	Q. Please state your name for the record.	
7	A. My name is Michael Cote, C-o-t-e, the	
8	spelling on my surname.	
9	Q. You are employed with the New Hampshire	
10	State Police; is that correct?	
11	A. That's correct. I've been employed with	
12	the Department of Safety of New Hampshire State	
13	Police since December of 2004.	
14	Q. What is your current position title?	
15	A. I'm currently a patrol supervisor, a	
16	sergeant with the state police. I've been in this	
17	capacity since July 22nd of last year.	
18	Q. For a period of time during your	
19	employment with the New Hampshire State Police,	
20	were you a detective?	
21	A. I was, from December of 2010 until my	
22	promotion date I just gave you.	
23	Q. So from December of 2010 until July 22nd	

		Page 5
1	of 2016 or July 21st of 2016, you were a	
2	detective; is that correct?	
3	A. Yes, that's correct.	
4	Q. And what were your job responsibilities	
5	as a detective with the New Hampshire State	
6	Police?	
7	A. I wore many hats. I was -- obviously,	
8	one, I was a state police liaison to the Northern	
9	Correctional Facility. I was a board of directors	
10	member for the Child Advocacy Center. I was an	
11	investigator for Coos County and there -- during	
12	multiple times during that tenure, I worked for	
13	the Major Crime Unit in homicide.	
14	Q. You investigated the assault upon	
15	Jonathan Leite that occurred here at the Northern	
16	New Hampshire Correctional Facility on August	
17	24th, 2012, right?	
18	A. I did.	
19	Q. How did you come to investigate that	
20	assault?	
21	A. Well, as I mentioned, one of the hats	
22	that I did wear during that tenure was the liaison	
23	from the Department of Corrections to the state	

Page 6

1 police. So basically I'm the investigator
2 assigned here in a state police capacity.
3 I was notified by Department of
4 Corrections personnel obviously of the assault.
5 Everything I do for the most part, I did, during
6 that time was past tense, assaults, et cetera.
7 Obviously I'm not here while -- most of the time
8 while they occur. So I was notified of the
9 assault and conducted the investigation from there
10 forward.
11 Q. And you created a file as part of doing
12 that investigation, right?
13 A. Correct.
14 MR. KING: Could you mark this, please.
15 (Discussion off the record.)
16 (Cote Exhibit 1 marked
17 for identification.)
18 Q. Sir, in just a minute I'm going to hand
19 you a stack of documents that we've marked as Cote
20 Exhibit 1, and the first sheet of the stack of
21 documents is titled Office of the County Attorney
22 Felony Case Referral Sheet, and the last sheet of
23 the stack of documents contains photos of an

Page 7

1 inmate named Ryan John Elliott. And I'm going to
2 ask you if this stack of documents that we're
3 marking as Cote Exhibit 1 contains your file
4 pertaining to the state police investigation of
5 the assault upon Jonathan Leite that occurred
6 August 24th, 2012, excluding Jonathan Leite's
7 medical records.
8 A. These are 29.
9 MS. CUSACK: The other thing that I
10 removed --
11 THE WITNESS: Are the sections?
12 MS. CUSACK: No, the NCIC reports --
13 THE WITNESS: Okay.
14 MS. CUSACK: -- for each individual,
15 because they are not producible. So it's the
16 criminal history for each of those individuals.
17 We took those out, right?
18 MR. FREDERICKS: Yes. I forgot about
19 that.
20 MS. CUSACK: So I -- so because we can't
21 share them with anybody.
22 MR. KING: Okay.
23 MS. CUSACK: That's not --

Page 8

1 A. Okay. So I see up to -- there's a
2 syllabus here that goes from 1 to 29. That's
3 Section 23. Let me just look at what is 24
4 through 29, because I don't know. Criminal
5 history and medical records.
6 So there's your answer. It's all here,
7 from what I can tell, excluding the documents that
8 you have been advised are not here.
9 Q. BY MR. KING: So Exhibit 1 to your
10 deposition consists of the state police file of
11 your investigation of the assault upon Jonathan
12 Leite that occurred here on August 24th, 2012,
13 excluding medical records and criminal history
14 records; is that correct?
15 A. Yes. Again, I didn't produce this
16 record, so I'm going off that it's all here. I
17 have no reason to believe it is not.
18 Q. All right. Can you go to Section 3 of
19 the file, sir.
20 A. What's the document headed?
21 Q. It's an August 29th, 2012, --
22 A. Section 3?
23 Q. Yes.

Page 9

1 A. Got it right here.
2 Q. Got it. Very good. Section 3 of Exhibit
3 1 contains a document that you prepared, correct?
4 A. Yes.
5 Q. And it is a report of your interview of
6 an inmate by the name of Ryan Elliott pertaining
7 to the August 24th assault on Jonathan Leite,
8 right?
9 A. Yes.
10 Q. And did you prepare this report as part
11 of an activity that you regularly conducted as a
12 detective with the New Hampshire State Police?
13 MR. FREDERICKS: Objection to form. Go
14 ahead.
15 A. An activity? I guess I do a narrative
16 report on all my interviews. So the answer would
17 be, yes, I did a narrative on my interview.
18 Q. And doing narratives on people you
19 interviewed in connection with criminal
20 investigations was something that you regularly
21 did as a detective with the New Hampshire State
22 Police, right?
23 A. Yes.

Page 10

1 Q. And is this document that we're looking
2 at, the narrative that you prepared of Ryan
3 Elliott, is this the type of document that you
4 would prepare to do a narrative of your interview?
5 **A. That's correct. It's called a DSSP**
6 **Continuation of Investigation Form 102.**
7 Q. Okay. And so you spoke with Ryan Elliott
8 in a room here at the Northern New Hampshire
9 Correctional Facility on August 29th, 2012, at
10 approximately 9:25 in the morning, right?
11 **A. Yes.**
12 Q. And how did you document what he told you
13 when the interview was occurring, if at all?
14 **A. I would have taken notes.**
15 Q. Handwritten notes?
16 **A. Yes.**
17 Q. And then what would you do with those
18 handwritten notes?
19 **A. Once a narrative is completed, all of the**
20 **notes are destroyed, and this becomes the formal**
21 **record of the interview, just like every other**
22 **case.**
23 Q. Now, if you look at the top of this

Page 11

1 document, the narrative of the interview with Ryan
2 Elliott, it says date of report, August 24th,
3 2012. That's not the date of this report. That's
4 the date that the crime was reported; is that
5 right?
6 **A. That's correct. The report date of the**
7 **crime is the case number, everything, the town,**
8 **everything goes back to the original date. And**
9 **for the most part, when you conduct this many**
10 **interviews or this many dockets, the header really**
11 **doesn't change. It's the same case. Does that**
12 **makes sense to you?**
13 Q. Yes. So when would you have prepared
14 this type of written narrative?
15 **A. Well, according to the bottom, if it's**
16 **accurate, October 9th, 2012.**
17 Q. So did you preserve your handwritten
18 notes of the August 29th, 2012, interview until
19 October 9th, 2012, when you typed up this
20 Continuation of Investigation Report form, after
21 which you would have destroyed your handwritten
22 notes?
23 **A. I would say, yes, and that's the date of**

Page 12

1 **the completion. I may start a report on a**
2 **different day, but the day I actually finish it is**
3 **the day that I use as the day of completion, if**
4 **that make sense.**
5 Q. Yes.
6 **A. If I get pulled away to handle something**
7 **else, obviously the report's not complete. I**
8 **don't finish out, sign it, do everything until I'm**
9 **done.**
10 Q. Right. So according to your narrative
11 of your interview with Ryan Elliott, Mr. Elliott
12 told you that he had left the cell -- strike that.
13 Have you had the opportunity to review
14 this narrative, sir?
15 **A. I'm looking at it right now.**
16 Q. Why don't you take a look at it and let
17 me know when you're finished with it.
18 **A. (Peruses document.) Okay.**
19 Q. Thank you. Inmate Elliott resided in the
20 cell where Jonathan Leite was assaulted on August
21 24th, 2012; is that correct?
22 **A. That's what I'm reading here. I don't**
23 **remember off memory who his roommate was. But**

Page 13

1 **that's what I'm reading here, yes.**
2 Q. Well, do you recall that two inmates by
3 the name of Ryan Elliott and Johnathan Gelinias
4 resided in the cell where Jonathan Leite was
5 assaulted?
6 **A. I think so. Because I remember Gelinias**
7 **being charged with a conspiracy in this, and I**
8 **remember his -- the overt act that we charged him**
9 **with. So I believe he was one of the ones that,**
10 **you know, resided in the cell.**
11 Q. All right.
12 **A. As far as Elliott, I'm going there. I'm**
13 **saying yes, but...**
14 Q. Yup. So Inmate Elliott told you that he
15 was away from the cell when the assault occurred;
16 is that right?
17 **A. Yes.**
18 Q. And then Inmate Elliott told you that
19 when he returned to the cell, something had
20 happened. Jonathan Leite was puking all over the
21 place; is that right?
22 **A. That's correct.**
23 Q. In your investigation of this assault,

Page 14

1 did you learn what happened to the vomit evidence?
2 **MR. FREDERICKS:** Objection to form. Go
3 ahead.
4 **A. Not specifically the vomit. I mean there**
5 **was definitely some falsification of physical**
6 **evidence that occurred in the cleanup of the**
7 **entire cell. Vomit, blood, this, that. I don't**
8 **know where it went. You know, I mean obviously I**
9 **wasn't there.**
10 Q. Right. I know that. I appreciate that.
11 **A. Got to answer the question correctly,**
12 **right?**
13 Q. Yes. Yeah. What, if anything, did you
14 learn about the falsification of physical evidence
15 in connection with this investigation?
16 **A. Obviously the cleanup occurred, because**
17 **it was not -- I know from the rounds sheet and**
18 **everything else and the videos that -- and the**
19 **course of conduct that happens in a correctional**
20 **facility, the inmates -- excuse me, correctional**
21 **staff do rounds. And therefore, this was picked**
22 **up relatively quickly, to leave no evidence for**
23 **this crime to be discovered.**

Page 15

1 Q. And by your testimony, are you stating
2 that the next instance when rounds were done on F
3 block, the corrections officer doing the rounds
4 should have looked into this particular cell?
5 **MR. FREDERICKS:** Objection to form. You
6 can answer.
7 **A. Do they look in every cell on every**
8 **round? I don't know. I don't work for the**
9 **Department of Corrections, sir.**
10 Q. Right. Right. Okay. If we could turn
11 to Section 9 of the report -- of the file rather.
12 **A. Okay.**
13 Q. Section 9 of the file is a narrative of
14 an October 4, 2012, interview that you conducted
15 of an inmate by the name of Paul Alfeo; is that
16 correct?
17 **A. Yes.**
18 Q. And this narrative was prepared, like
19 the previous narrative we looked at, as part of
20 activity that you regularly conducted as a
21 detective with the New Hampshire State Police,
22 right?
23 **A. Yes.**

Page 16

1 Q. And I'm going to give you -- please
2 review your narrative of the report of Inmate
3 Alfeo and tell me when you've finished reviewing
4 it.
5 **A. (Peruses document.) Okay.**
6 Q. Do you remember how you came to interview
7 Mr. Alfeo?
8 **A. I don't.**
9 Q. Mr. Alfeo told you that when the assault
10 occurred, he was seated directly outside Cell
11 Number 9 where the assault occurred, right?
12 **A. Yes.**
13 Q. And he told you that while he was seated
14 there, he began hearing grunts and things like
15 someone was getting the hell beat out of them,
16 right?
17 **A. Correct.**
18 Q. And Mr. Alfeo further told you that the
19 assault on Jonathan Leite lasted for what seemed
20 like ten minutes, right?
21 **A. Correct.**
22 Q. And Inmate Alfeo told you that he knew
23 that Jonathan Leite was really hurt because he

Page 17

1 heard it, right?
2 **A. Correct.**
3 Q. Then Inmate Alfeo told you that after the
4 beating, he saw Jonathan Leite lying face down on
5 the floor of the cell, right?
6 **A. Yes.**
7 Q. Mr. Alfeo went on to tell you that
8 Jonathan Leite's body was positioned with his feet
9 closest to the toilet and his head towards the
10 outside wall, right?
11 **A. Yes.**
12 Q. Inmate Alfeo told you that he believed
13 that Jonathan Leite was dying or dead already in
14 the immediate aftermath of the assault, right?
15 **A. That was his thought process, yes.**
16 Q. And then Inmate Alfeo told you in the
17 interview that he later saw Jonathan Leite on his
18 bunk in the dayroom, right?
19 **A. Yes.**
20 Q. And Mr. Alfeo told you that Jonathan
21 Leite was not moving at all when he was lying in
22 the bunk; is that right?
23 **A. Yup.**

<p style="text-align: right;">Page 18</p> <p>1 Q. And then finally, Inmate Alfeo told you 2 that the assault on Jonathan didn't come to light 3 until Mr. Leite was later told to stand for count 4 by correctional officers, right? 5 A. Correct. 6 Q. Why don't we go on to Section 10 of the 7 file. And Section 10 of the file is a narrative 8 of an October 4, 2012, interview that you and 9 Investigator Coulombe conducted of an inmate named 10 Joseph Broyer pertaining to the August 24th, 2012, 11 assault on Jonathan Leite, right? 12 A. Yes. 13 Q. And I'd like to give you the opportunity 14 to review this narrative, and when you're finished 15 reviewing it, let me know. 16 A. (Peruses document.) Okay. 17 Q. You prepared the narrative -- 18 A. Yes. 19 Q. -- of your interview with Joseph Broyer 20 as part of activities that you regularly conducted 21 as a detective with the New Hampshire State 22 Police, right? 23 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes. 2 Q. And is that recording preserved? 3 A. I assume it is part of the file. 4 Q. So it still exists; is that right? 5 A. It does. 6 MS. DOUGLASS: Can I interrupt for just a 7 second? Can you and I talk briefly? 8 MR. KING: Yeah. May we take a brief 9 break? 10 MS. CUSACK: All right. We'll leave. 11 (Recess taken.) 12 Q. BY MR. KING: We already established, 13 sir, that Mr. Elliott told you that when he 14 returned to the cell that day, he observed 15 Jonathan Leite, quote, puking all over the place? 16 A. Yes. 17 Q. Do you recall that? 18 A. Yes. 19 Q. Yes. Did you make a factual finding in 20 your investigation that Jonathan had vomited all 21 over Cell Number 9? 22 MR. FREDERICKS: Objection to form. Go 23 ahead.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And does your narrative accurately 2 reflect what Joseph Broyer told you? 3 A. Yes. There was also a recording with 4 this one. 5 Q. Are there recordings of all the 6 interviews? 7 A. Just the ones I say see attached 8 recording. Some inmates will not let me record 9 them. Obviously we're in prison. Some people 10 don't want to go on the record. 11 MR. KING: Off the record. 12 (Discussion off the record.) 13 Q. Back on the record. If we look at the 14 narrative of the interview of Paul Alfeo -- 15 A. What number was that? 16 Q. -- which we just discussed. 17 MS. CUSACK: 9. 18 Q. That was 9, sir. 19 A. Yes. 20 Q. The end of your narrative says, "See the 21 recording for further details." 22 So the interview of Paul Alfeo would have 23 been recorded; is that correct?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. No. Again, there's no evidence for me 2 to take in as far as evidence in the cell. 3 Q. Um-hum. 4 A. It was cleaned up. 5 Q. Okay. Going back to Number 9, your 6 interview of Paul Alfeo, did you make any finding 7 as to how long the assault on Jonathan Leite 8 happened based on what Mr. Alfeo told you? 9 A. I actually couldn't, because inmates were 10 all guessing. They were guessing on time. As 11 we've gone through some of the narratives here, 12 you hear two or three minutes. You hear ten 13 minutes. They're guessing and telling me what 14 they believe is based on what they're hearing. So 15 they're guessing, which is -- there's no way that 16 I could make a finding on that. 17 Q. Okay. All right. Now, before we took 18 that brief break, you were -- you had reviewed 19 your narrative of the interview of Joseph Broyer, 20 right? 21 A. Yes. 22 Q. And you told me that you prepared this 23 narrative as part of an activity you regularly</p>

Page 22

1 conducted as a detective at the New Hampshire
2 State Police, right?
3 **A. Yes.**
4 **Q.** Now, do you have any understanding of the
5 practice that's described here about ingesting
6 Suboxones and then vomiting them up in the prison?
7 Is that something that happens in correctional
8 facilities?
9 **A. Yes. I've investigated inmates for doing**
10 **this.**
11 **Q.** Okay. So tell me what inmates do with
12 respect to Suboxone, if you don't mind.
13 **A. Seems to be the choice or the drug of**
14 **choice here at this facility, at least during the**
15 **time frame that we're talking about. Today I**
16 **don't know, but during that time. It comes in**
17 **from an outside visit a lot of times. They meet**
18 **with somebody, usually a girlfriend, somebody that**
19 **they meet with. There's -- that person cheeks the**
20 **drugs, and it's usually wrapped two or three times**
21 **in a balloon or a glove of a finger that's cut**
22 **off, and they pass it through a kiss to the**
23 **inmate. The inmate then swallows it. The inmate**

Page 23

1 then vomits it up later on on the unit, and
2 it's -- now it's in the housing unit.
3 **Q.** Okay.
4 **A.** And it's also, you know, taken in from
5 outside rectally by other inmates but -- you know,
6 in the same capacity. But as far as it being
7 ingested, that's the way it comes in.
8 **Q.** Okay. So the drug, is it in a pill form?
9 **A. Pills or strips.**
10 **Q.** And it remains intact after it's ingested
11 so it can be vomited up?
12 **A. That's correct. So it's -- it's bound**
13 **two or three times, different layers, as insurance**
14 **if you will, each layer being, you know, if you --**
15 **one balloon.**
16 **Q.** Oh, one. Oh.
17 **A. Tie it, cut it; another balloon, tie it,**
18 **cut it, opposite way, and then back and forth,**
19 **back and forth. And they have, you know, like I**
20 **say red, green, blue, whatever. They tie it up so**
21 **there's three different balloons. And then the**
22 **pills or the strips are either -- they're in**
23 **either cellophane or tinfoil before they're**

Page 24

1 **ballooned up, if you will. And then they puke**
2 **them up.**
3 **Q.** And then the Suboxone is shared amongst
4 the inmates; is that right?
5 **MR. FREDERICKS:** Objection to form. Go
6 ahead.
7 **Q.** In your experience.
8 **A. It can be sold I guess maybe would be a**
9 **better word than shared. I mean whether somebody**
10 **chooses to give some rather than sell it, --**
11 **Q.** All right.
12 **A. -- I don't know.**
13 **Q.** Okay. Inmate Broyer told you that before
14 the assault happened, he knew that there was going
15 to be what he thought was going to be a fight
16 there; is that right?
17 **A. Yes.**
18 **Q.** Did you gain an understanding of how
19 Inmate Broyer suspected that there would be a
20 fight in Cell Number 9?
21 **A. No. Well, actually, if I read on in that**
22 **narrative, it does tell -- it says that they**
23 **thought that Jonathan Leite was going to be**

Page 25

1 bringing back drugs from a visit and he said he
2 should be -- oh, hold on. He had inquired if
3 Inmate Leite was supposed to be bringing back some
4 drugs from the unit from another inmate. The
5 inmate replied he should be but he won't have it
6 for long. Someone is going to take it from him.
7 So he's inferring that there's going to
8 be -- someone is going to try to take Jonathan
9 Leite's drugs after this visit. So my
10 understanding, from reading this narrative, is
11 that's -- he knows that Inmate Leite will not give
12 the drugs willingly, so there will be a fight.
13 **Q.** Now, as part of your investigation, did
14 you -- you learned that Inmate Leite was tested
15 for drugs when he was hospitalized at Androscoggin
16 Valley Hospital and later at Dartmouth-Hitchcock,
17 right?
18 **MR. FREDERICKS:** Objection to form. You
19 can answer.
20 **A. I know it's common practice, but I don't**
21 **know. I don't remember. I mean there was medical**
22 **records that I would have to review to say what**
23 **was in his sytem. I don't know.**

Page 26

1 Q. Well, do you recall that the original
2 suspicion of Northern New Hampshire Correctional
3 Facility personnel was that Jonathan's symptoms
4 were attributable to drugs?
5 **A. I think so.**
6 Q. And later, after medical examination, it
7 was determined that the symptoms were not
8 attributable to drugs but were in fact
9 attributable to an assault, right?
10 **A. Yes. Although, like we previously said,**
11 **if the drugs were ingested in a balloon, it would**
12 **not be in his system. You realize that, right?**
13 Q. I was going to ask you that question.
14 **A. Okay. You're going to ask me that**
15 **question.**
16 Q. All right. If the drugs were ingested in
17 a balloon, would they appear on a drug test?
18 **A. They would not. Because again, he**
19 **wouldn't feel the effects of them. They're bound**
20 **in latex three -- two, three, four layers deep.**
21 **Which is why it's safe to do. Just like people**
22 **coming in over the border do it this way too on**
23 **airplanes. I mean it's a common practice of**

Page 27

1 **smuggling, if you will.**
2 Q. But those drugs eventually would have
3 been passed through a bowel movement; is that
4 right?
5 **MR. FREDERICKS:** Objection to form. You
6 can answer.
7 **A. It would come out one of two ends.**
8 Q. All right.
9 **A. How's that? I don't know which way,**
10 **vomited or defecated.**
11 Q. Understood. Turning back to the
12 narrative of Inmate Broyer. Inmate Broyer told
13 you that after the assault, Inmate Gelinan and an
14 inmate by the name of Nicholas Quimby brought a
15 sharpened piece of a metal fan which had been
16 hidden in the unit; is that right?
17 **A. Yes.**
18 Q. Did you ever determine where that
19 sharpened piece of a metal fan was hidden?
20 **A. No.**
21 Q. Did you know through your experience as
22 the state police liaison to the Northern New
23 Hampshire Correctional Facility where inmates on F

Page 28

1 block would hide weapons such as that?
2 **A. No. I don't know where it was. It was**
3 **never found. I didn't learn this until October**
4 **4th, and the assault occurred obviously months**
5 **before. So I mean it would be relevant to believe**
6 **that that was no longer on F block after an**
7 **assault like that.**
8 Q. Right. Did you ever learn in connection
9 with your duties as a state police liaison to the
10 Northern New Hampshire Correctional Facility that
11 inmates would hide objects that could be used as
12 weapons in the mop closet on F block?
13 **A. It's possible. Anywhere, you know, would**
14 **be a better answer. Could hide them anywhere.**
15 Q. But had you learned that the mop closet
16 was a popular place for hiding objects that could
17 be used as weapons?
18 **A. I can't say a popular place. I don't**
19 **know. I mean I've never charged anybody with the**
20 **crime of hiding a shank here. So I wouldn't know**
21 **if they hide them in the mop closet or under their**
22 **bed or where. I would say that, you know, a**
23 **general -- I know, just through being a liaison**

Page 29

1 **here, that a lot of people don't want to get**
2 **caught with things that are directly under their**
3 **control, so a common area is a better hiding spot.**
4 Q. I see. All right. Inmate Broyer told
5 you that Inmate Quimby had placed a sharpened
6 metal to Jonathan Leite's throat and forced him to
7 drink yellow cleaning solution?
8 **A. Yes.**
9 Q. Did you have an understanding as to
10 whether yellow cleaning solution was kept on F
11 block?
12 **A. I believe they're packets that are**
13 **different colors, so there's some -- I know that**
14 **just from being on the housing units. There's**
15 **different colors. Whether or not it was yellow on**
16 **F block, I don't know.**
17 Q. Yellow --
18 **A. They have cleaning supplies, obviously,**
19 **to clean the unit.**
20 Q. All right. And those cleaning supplies
21 are kept where or were kept where in August of
22 2012?
23 **MR. FREDERICKS:** Objection to form. You

<p style="text-align: right;">Page 30</p> <p>1 can answer.</p> <p>2 A. I would have to speak generally that I</p> <p>3 know they have to get them from a controlled area,</p> <p>4 so a correctional member would have to give some</p> <p>5 to the cleaners. How many they're allowed to keep</p> <p>6 on a unit or where, you'd have to ask somebody in</p> <p>7 Corrections.</p> <p>8 Q. I'll represent to you that Inmate Garcia</p> <p>9 was a cleaner, so he would have had access to this</p> <p>10 cleaning solution if he were a cleaner?</p> <p>11 A. I believe so.</p> <p>12 Q. Do you know whether those cleaners were</p> <p>13 kept in the mop closet?</p> <p>14 A. I don't know. Especially not on that one</p> <p>15 day. Whether there any in there, I don't know.</p> <p>16 Q. And you told me that where the interviews</p> <p>17 are recorded, the recordings are part of the state</p> <p>18 police file?</p> <p>19 A. If they're recorded. There is a</p> <p>20 recording if it says it on the report.</p> <p>21 Q. Back in 2012 in what form were those</p> <p>22 recordings kept?</p> <p>23 A. What do you mean?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. That's correct. He was in the dayroom.</p> <p>2 Q. Did you ever review video evidence as</p> <p>3 part of your investigation?</p> <p>4 A. I would say yes.</p> <p>5 Q. Did you make any instructions or give any</p> <p>6 instructions that video evidence should be</p> <p>7 preserved?</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. I work jointly with the Department</p> <p>11 Corrections -- with the Department of Corrections.</p> <p>12 They have investigators there. We've been working</p> <p>13 jointly for -- since 2010 up until, again, last</p> <p>14 year. I rely on them. They know what I need, and</p> <p>15 they've never not given me what I needed. So I</p> <p>16 don't sit there and baby-sit them.</p> <p>17 Q. Okay. Your task in conducting this</p> <p>18 investigation was to determine who assaulted</p> <p>19 Jonathan Leite, right?</p> <p>20 A. That's correct.</p> <p>21 Q. Was your task in conducting this</p> <p>22 investigation in any way to determine what</p> <p>23 correctional officers could have done, if</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. I mean cassette tape, disk?</p> <p>2 A. No, a disk, CD.</p> <p>3 Q. All right.</p> <p>4 A. Yeah. They're burned to a CD.</p> <p>5 Q. And if we look at Section 11 of your</p> <p>6 report.</p> <p>7 A. Yup.</p> <p>8 Q. Section 11 of your report is a narrative</p> <p>9 of an interview that you conducted with Nicholas</p> <p>10 Quimby?</p> <p>11 A. That's correct.</p> <p>12 Q. And you prepared this narrative in the</p> <p>13 course of activity regularly conducted as a</p> <p>14 detective with the state police, right?</p> <p>15 A. Yes.</p> <p>16 Q. And Inmate Quimby told you that in the</p> <p>17 immediate aftermath of the assault, he observed</p> <p>18 Jonathan Leite sleeping on the bottom bunk in Cell</p> <p>19 Number 9, right?</p> <p>20 A. Yes.</p> <p>21 Q. And you learned in the course of your</p> <p>22 investigation that Cell Number 9 was not Jonathan</p> <p>23 Leite's residence, right?</p>	<p style="text-align: right;">Page 33</p> <p>1 anything, to prevent the assault on Jonathan</p> <p>2 Leite?</p> <p>3 A. Absolutely not.</p> <p>4 Q. Did your investigation at all entail</p> <p>5 determining whether correctional officers detected</p> <p>6 the injuries that Jonathan Leite had suffered as</p> <p>7 promptly as they should have?</p> <p>8 A. Are you asking me my opinion?</p> <p>9 Q. No, I'm not. I'm asking you if it was --</p> <p>10 A. Well, I'm not a medical personnel, so I</p> <p>11 guess you're asking me my opinion considering I</p> <p>12 can't make a statement on that. How would I know?</p> <p>13 Q. No, my question was, was it a -- and I</p> <p>14 think you answered, but -- in performing this</p> <p>15 investigation were you at all tasked with</p> <p>16 determining whether correctional officers detected</p> <p>17 the injuries to Jonathan Leite as promptly as they</p> <p>18 could have?</p> <p>19 A. No. I mean I was advised what they</p> <p>20 found, what the inmates told me, and that was --</p> <p>21 the inmates told me that it was detected during a</p> <p>22 standing count. So that's my determination.</p> <p>23 Q. Okay. Your investigation had nothing</p>

Page 34

1 whatsoever to do with evaluating correctional
2 officer conduct, right?

3 **A. Sir, I don't police police departments,**
4 **the Department of Corrections or any other law**
5 **enforcement agency. I'm an investigator in that**
6 **time for the state police.**

7 **MR. KING:** So I think if you could just
8 read back my question. I think the answer is yes,
9 but I don't want to put words in your mouth. So
10 could you just read back my question.
11 (Question read.)

12 **A. I don't -- no, not any wrongdoing.**

13 Q. Okay.

14 **A. It seemed like a very vague question,**
15 **what you asked me, but...**

16 Q. Well, let me try it again, because the
17 way you said no, it's going to create a confusing
18 answer on the record.

19 **A. Can you be a little more specific in your**
20 **question?**

21 Q. Your investigation didn't have anything
22 to do with evaluating correctional officer
23 conduct, correct?

Page 35

1 **A. Evaluating their conduct? I mean I never**
2 **found any wrongdoing in my investigation.**
3 **That's -- I guess that would be my answer. I**
4 **didn't -- I would think that I look at them. I**
5 **talk to them. I look at their reports. If there**
6 **was something that jumped out at me, I would have**
7 **to bring it to light. I never found that I guess**
8 **would be my answer.**

9 Q. Okay.

10 **A. (Flipping pages.)**

11 **MR. FREDERICKS:** You can wait. He'll
12 tell you.

13 **THE WITNESS:** I'm just trying to keep up.

14 Q. Sir, in conducting your investigation,
15 did you ever determine whether one of the inmates
16 on F block at this time, August of 2012, went by
17 the nickname Pops?

18 **A. Yeah, there was an old fellow. I don't**
19 **remember his name now, but I'm sure it's probably**
20 **in this report. But I think I do remember that.**

21 Q. So if you look at Tab 15.

22 **A. Okay. Yes, Mr. Johanan.**

23 Q. Was Mr. Johanan the inmate who went by

Page 36

1 the name of Pops or not?

2 **A. Could be. I don't remember.**

3 Q. All right.

4 **A. I do remember he was an older gentleman.**
5 **You could tell from his 1936 birthday.**

6 Q. Yes. Yes. And your narrative of your
7 interview of Edward Johanan accurately reflects
8 what Mr. Johanan told you on January 8, 2013; is
9 that, correct?

10 **A. It does, from what he told me. But**
11 **there's problems with Mr. Johanan as far as his**
12 **testimony being able -- being able to be**
13 **corroborated.**

14 Q. Okay. What were those problems?

15 **A. Well, Mr. Johanan came forward, if I**
16 **remember correctly, because he was holding heroin**
17 **or holding a narcotic, and subsequently came to us**
18 **and wanted to tell us what happened, because he**
19 **was looking at charges. If my memory serves me**
20 **correctly here, what he told me was fictitious**
21 **because it could never be collaborated on the**
22 **video. During the time of the assault, he was**
23 **never near the door of Jonathan Leite.**

Page 37

1 Q. Oh, all right.

2 **A. So I think it was for his own saving**
3 **grace, if you will. This is my recollection.**

4 Q. Okay. I'd like you to move forward
5 through the file to the incident report prepared
6 by Sergeant Smith.

7 **A. How deep is that?**

8 Q. Not that deep, so --

9 **MR. FREDERICKS:** I think you passed it.

10 Q. The first incident report we have was
11 prepared by Sergeant Smith. Then the next, we
12 have a statement from Kathleen Bergeron.

13 **A. Okay.**

14 Q. Then we have a responder report.

15 **A. Okay. I have it.**

16 Q. And immediately after that we have the
17 incident report prepared by Jeffrey Smith.

18 **A. Okay.**

19 Q. And if we look at the narrative on the
20 second page of then Sergeant Smith's incident
21 report. Review what Sergeant Smith wrote and let
22 me know when you're finished.

23 **A. (Peruses document.) Okay.**

<p style="text-align: right;">Page 38</p> <p>1 Q. Sergeant Smith writes in his report that</p> <p>2 he reviewed video footage of F block on August</p> <p>3 24th, 2012, of activities occurring after the</p> <p>4 assault, that he saw a time where Jonathan Leite</p> <p>5 leaned over and vomited onto the floor.</p> <p>6 Did you read that?</p> <p>7 A. I just read that, yes.</p> <p>8 Q. Have you ever seen such video footage?</p> <p>9 A. I don't think so.</p> <p>10 Q. Did you ever ask Sergeant Smith what</p> <p>11 happened to that video footage?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. Well, I mean I'm tasked with</p> <p>15 investigating an assault that occurred in Cell</p> <p>16 Number 9. I was -- what I, as an investigator, am</p> <p>17 looking for is pretty -- it's like Dragnet; just</p> <p>18 the facts, right? I'm looking at Cell Number 9,</p> <p>19 what happened, who's involved with Cell Number 9.</p> <p>20 Whether he vomited after or something, I don't</p> <p>21 know. I mean it's -- what I'm looking for is to</p> <p>22 identify who was coming in and out of that cell,</p> <p>23 what cell it occurred in, who would have</p>	<p style="text-align: right;">Page 40</p> <p>1 investigation report.</p> <p>2 A. Okay.</p> <p>3 Q. All right. Well, actually let's start</p> <p>4 looking at page 11 of the investigation report.</p> <p>5 A. Okay.</p> <p>6 Q. Page 11 of the investigation report</p> <p>7 contains the beginning of Investigator Coulombe's</p> <p>8 description of his review of video footage of F</p> <p>9 block on August 24th, 2012, beginning at 2:30,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. If we look down at the bottom -- have you</p> <p>13 seen this video footage yourself?</p> <p>14 A. I don't think I watched the whole thing.</p> <p>15 I don't remember.</p> <p>16 Q. All right.</p> <p>17 A. I really don't remember. I may have.</p> <p>18 Q. This investigation report reflects that</p> <p>19 Jonathan Leite entered Cell Number 9 at 2:39 and</p> <p>20 48 seconds, right?</p> <p>21 A. Yes.</p> <p>22 Q. If we look, going onto the next page,</p> <p>23 Investigator Coulombe first writes that over the</p>
<p style="text-align: right;">Page 39</p> <p>1 knowledge, who do I need to be interviewing as an</p> <p>2 investigator. Whether or not he vomited or not</p> <p>3 due to an assault, Attorney King, it's kind of</p> <p>4 irrelevant to me. All of his injuries will be</p> <p>5 recorded in the medical records.</p> <p>6 Q. Okay. You told me a short while ago that</p> <p>7 you had determined that Mr. Johanan, if that's how</p> <p>8 you say his name, wasn't in the vicinity of the</p> <p>9 cell when the cell -- wasn't in the vicinity of</p> <p>10 the cell when the assault occurred; is that right?</p> <p>11 A. That's my recollection. I think there</p> <p>12 was an issue with his testimony on the validity of</p> <p>13 it. Because again, I think he was caught with</p> <p>14 heroin, and this -- we could figure this out.</p> <p>15 Q. Can you look back, sir, at the -- we</p> <p>16 haven't looked at this together yet, but it's at</p> <p>17 the beginning of the state police file, the</p> <p>18 Continuation of Investigation Report prepared by</p> <p>19 Investigator Coulombe.</p> <p>20 MR. FREDERICKS: In Section 2, right?</p> <p>21 MR. KING: Yes.</p> <p>22 A. Okay.</p> <p>23 Q. And if we look at page 12 of the</p>	<p style="text-align: right;">Page 41</p> <p>1 next three minutes a lot of inmates can be seen</p> <p>2 hanging around Cell 9, right?</p> <p>3 A. What time?</p> <p>4 Q. Over -- the top of the page, he writes</p> <p>5 that over the course of the next three minutes --</p> <p>6 A. Oh, yeah. Yes, yes, yes. Okay.</p> <p>7 Q. -- a lot of inmates are seen hanging</p> <p>8 around Cell 9.</p> <p>9 A. Yes.</p> <p>10 Q. Did you look at this footage that he's</p> <p>11 describing to determine who the inmates were?</p> <p>12 A. This is where my joint investigation with</p> <p>13 the investigation unit is these guys know these</p> <p>14 guys. An inmate in a jumpsuit, full of tattoos,</p> <p>15 come on, I don't know them. These guys work with</p> <p>16 these guys all the time. They were instrumental.</p> <p>17 Because Mr. Leite was not helpful. He was not</p> <p>18 coming to the table to help himself out with this</p> <p>19 investigation whatsoever. I had to really weigh</p> <p>20 on the investigations unit to give me people to</p> <p>21 investigate, to talk to, to interview.</p> <p>22 Q. Okay. And this page 12 of Investigator</p> <p>23 Coulombe's investigation report reflects that at</p>

<p style="text-align: right;">Page 42</p> <p>1 one point, 2:48, apparently Edward Johanan did 2 enter Cell Number 9, right? 3 A. Yes, sir. 4 Q. Okay. And he's in there for about four 5 minutes, according to the video, right? 6 A. Yes, sir. 7 Q. Did you make any factual finding pursuant 8 to your investigation of how long Jonathan Leite 9 was in that cell, Cell Number 9? 10 A. I don't remember. 11 Q. All right. 12 A. I don't remember. I mean you can go from 13 here that -- you could surmise that inmate 14 leaving. He was assaulted. It took about two 15 minutes, and then -- and then he exits at 16:20. 16 So I mean I'm not going to do the math for us, but 17 it is what -- 18 Q. An hour and 40 minutes approximately he 19 was in the cell, right? 20 A. When does he go in? I have my finger on 21 when he left. 22 Q. He goes in at 2:39, and then he emerges 23 at 4:20.</p>	<p style="text-align: right;">Page 44</p> <p>1 and then 14:41 these inmates come down from the 2 mezzanine. So that's four minutes, if one of 3 those inmates that's coming off the mezzanine is 4 the one leaving. 5 Q. Oh. We have Jonathan entering the cell 6 at 2:39, and then we have beginning from 2:41 7 approximately to 2:44, Investigator Coulombe is 8 describing a lot of inmates hanging around Cell 9 Number 9, right? 10 A. Well, the next three minutes after -- I'm 11 reading it as after 14:41, in the next three 12 minutes there is a lot of inmates hanging around 13 there. 14 Q. Fair enough. So that takes us to 2:45, 15 right? 16 A. It does. 17 Q. And then there's some more inmate 18 activity around Cell 9 that Investigator Coulombe 19 describes between 2:47 and 2:48, right? 20 A. Yes. 21 Q. And then between 2:48 and 2:56 or 2:49 22 and 2:57, we have several inmates entering and 23 exiting Cell Number 9?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Yup. 2 Q. And you didn't make any finding that he 3 left that cell at any point during that interval, 4 right? 5 A. No. 6 Q. I think you said -- you said something 7 about two minutes in your earlier testimony. What 8 were you referring to in making reference to a 9 two-minute time period? 10 A. Where does he go in again? 2:39. 11 Q. He goes in at 2:39. 12 A. 45. So it means it's longer than that. 13 What is that? One inmate leaves Cell Number 9 14 with his shirt off, wipes his face with his shirt, 15 then walks up the stairs out of view of the 16 camera. I guess you could infer that that inmate 17 was involved. 18 Q. So that's -- 19 A. Six minutes. 20 Q. -- six minutes after Jonathan enters. 21 A. Six minutes. Okay. My bad. 22 Q. Thank you. And then -- 23 A. Although, sir, I think he goes in there,</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. FREDERICKS: Objection to form. Go 2 ahead. 3 A. I'm not following you here. 4 Q. Okay. 5 A. So 14:47 another inmate -- you're talking 6 14:47 and 19 seconds, another inmate enters Cell 7 9. '47:45 seconds an inmate exits Cell 9. At 8 14:48 an inmate exits Cell 9, walks over to 9 Leite's bunk, appears to grab some clothing and 10 bring it in Cell 9. Over the next three minutes 11 there seems to be confusion around Cell 9. The 12 same inmate who grabbed the clothing off Leite's 13 bunk exited Cell 9 again and went back to Leite's 14 bunk. This time he got some blankets and 15 something else out of the foot locker. You're 16 talking about that time frame? 17 Q. Yeah. 18 A. Yes. 19 Q. And then I was bringing up that we had -- 20 A. With Johanan. 21 Q. We had suspicious activity in the 22 vicinity of Cell 9 over the next eight minutes; is 23 that right?</p>

Page 46

1 A. Yes.

2 Q. So in that time interval, 2:39 to 2:56 or

3 2:57, we can agree that the assault is going on at

4 some point during that period between 2:39 and

5 2:57, right?

6 A. Well, I would say -- I would say 2:41 and

7 2:45, which is --

8 Q. How do you -- I'm sorry. How do you know

9 that the assault still isn't ongoing when the

10 inmate leaves his cell with the shirt off --

11 leaves the cell with his shirt off?

12 A. Could it have continued?

13 Q. Yes.

14 A. Well, I guess it could have. But based

15 on the investigation and its totality, we find

16 out, we believe that -- we come to the conclusion

17 that Inmate Leite was hit from behind. So that

18 would be one of the inmates coming in from the

19 mezzanine and -- because he wouldn't have been

20 facing his attacker, right? So the other inmates

21 put it between -- depending on who you talk to,

22 from two to ten minutes, right? You're at -- I

23 mean I guess the best way to surmise what I'm

Page 47

1 trying to say is I think the brunt of the injury

2 occurred within the first two minutes. By Leite's

3 own statements, he was hit from behind. It was on

4 his second interview, with a gentleman from your

5 office I believe, he was hit from behind. It was

6 like the lights went out, so which leads me to

7 believe that the majority of the assault occurred

8 within the first two minutes of this.

9 Q. Oh, let's not move on from that report

10 just yet. On page 12 of the investigation report

11 prepared by Investigator Coulombe, it indicates

12 that the video clip ended at 3:00 and 20 seconds.

13 A. Okay.

14 Q. Did you ever make inquiry into the

15 existence of any video footage between 3:00 and

16 4:20?

17 A. No. Again, I -- in my mind, I had made

18 the conclusion that the assault occurred during

19 the time we spoke about.

20 Q. But wouldn't you have wanted that video

21 footage to determine what inmates did what with

22 the physical evidence related to the assault?

23 A. You could never tell that from the video.

Page 48

1 Q. Why not?

2 A. Have you seen the video?

3 Q. I haven't seen the video that doesn't

4 exist.

5 A. It's pretty --

6 MS. CUSACK: Well, hold on here. You

7 have seen video after 15:00. You've showed it to

8 nine or ten other witnesses. So to try to at

9 least confuse this witness about other video not

10 existing, I think that is just wrong. And if

11 there's a question, ask him the question. Don't

12 try to indicate that there's no video that exists

13 after 15:00, because you know as well as I do that

14 there is and that you have seen it and that at

15 least ten other witnesses have been shown that

16 video.

17 MR. KING: Okay.

18 MS. CUSACK: It might not be ten, but...

19 (Pause.)

20 MS. CUSACK: Can we take a break?

21 (Recess taken.)

22 Q. BY MR. KING: Back on the record. Was

23 there any video evidence maintained in the state

Page 49

1 police file?

2 A. There was video.

3 Q. And --

4 MS. CUSACK: You got those clips.

5 MR. KING: Was the video that was

6 contained in the state police file the video that

7 was supplied to us?

8 MS. CUSACK: Yes.

9 MR. KING: Okay.

10 MS. CUSACK: We represented that to you

11 on the record at one point as well in I can't

12 remember whose depo.

13 Q. BY MR. KING: Do you know who made the

14 decision as to what video evidence to download

15 here and what video evidence not to download?

16 A. I would think Sergeant Smith. He was in

17 charge of doing that. I'm going off recollection.

18 Q. All right. And you just -- if you

19 reviewed video evidence in connection with your

20 investigation, you just reviewed the video

21 evidence that Sergeant Smith supplied you; is that

22 correct?

23 A. Yes. We looked at the time again that

Page 50

1 the assault was -- that I figured it had occurred,
2 that the investigation led us to believe it
3 occurred, and I relied heavily on them, like I
4 said before, to identify those inmates coming in
5 and out of that cell during that time. I have no
6 way -- I built this case without your client, and
7 he didn't help me, didn't help himself. I had to
8 put this case together with those investigators
9 and identifying what we saw on the video.

10 Q. All right. Now, I'd like to go further
11 into your file into some handwritten notes that
12 are contained here, handwritten notes that appear
13 to be from inmates.

14 Okay. We're looking at a note that
15 says: Investigation, you got the wrong the guys.
16 Lavallee, Garcia are the the you want and piss
17 test them. They're dirty. F block for the
18 beating.

19 Do you know how this note came to be in
20 the file?

21 A. Off memory.

22 Q. Yeah.

23 A. I think this was just thrown in a request

Page 51

1 slip box. I think.

2 Q. Okay.

3 A. Can't remember exactly. I think that
4 question could probably more accurately be known
5 by the Department of Corrections personnel, but
6 that's my recollection.

7 Q. Did you ever find out who wrote the note?

8 A. No.

9 Q. Now, the next document is another
10 handwritten note that appears to be from an
11 inmate. Yes?

12 A. Yes.

13 Q. I'll just give you the opportunity to
14 read it over.

15 A. (Peruses document.) There's a lot of
16 words I can't make out here: Something isn't
17 right there so -- what? So far we -- the fourth
18 or fifth line down there. Fifth line down.

19 MR. FREDERICKS: Just read it the best
20 you can and then let him know.

21 A. (Peruses document.)

22 Q. I believe, sir, it says: Something isn't
23 right there so for me to not get injured or worse,

Page 52

1 you cannot tell anyone about this or future head's
2 up.

3 Sound like I read that correctly?

4 A. I think so, yeah.

5 Q. I'm not going to ask you about that
6 sentence. The next sentence I am going to ask you
7 about, the inmate writes: F block is becoming
8 more violent because nothing is being done when
9 someone gets robbed or beaten.

10 And I cannot read the next word. I don't
11 know if you can, sir.

12 A. I don't know.

13 MS. CUSACK: Badly.

14 Q. Badly.

15 A. Badly.

16 Q. Let's just stop there and let me ask you,
17 in the course of your investigation, did you learn
18 that in the time period leading up to August 24th,
19 2012, F block had become a more violent place?

20 A. No.

21 Q. Did you undertake any investigation into
22 whether the inmate's allegation that F block was
23 becoming more violent was true?

Page 53

1 A. No, I wouldn't have. I mean I've not
2 been alerted of any crime.

3 Q. Hmm?

4 A. I would not have, because I was not
5 alerted of any crime.

6 Q. I see. How did this note come to be
7 included in the state police's file?

8 A. Again, I don't know. This was -- it's in
9 this trio I would say of request slips, so I would
10 again imagine that it came in the same way.

11 Q. And you don't know who authored the note?

12 A. No. It could be the same person, for all
13 I know.

14 Q. Well, the writing doesn't look similar,
15 does it?

16 A. Well, I'm not -- I'm definitely not a
17 handwriting expert for the FBI. However, I would
18 say that this person (indicating) probably tried
19 to make their writing as generic as possible and
20 the big words.

21 Q. Yeah. Did you ever find out whether
22 there were people who were designated as
23 confidential informants on F block on August 24th,

Page 54

1 2012?

2 **MR. FREDERICKS:** Objection to form. Go

3 ahead.

4 **A. Well, what do you mean by a confidential**

5 **informant? People that came and spoke with me**

6 **even though they don't want to go on record?**

7 **Because everybody's outlined that's in that**

8 **capacity.**

9 Q. All right. And the reason why I asked

10 the question is you'll see in the last line of

11 this note that you were just looking at: I must

12 have your word as a man that my name as your CI

13 will never be divulged. So --

14 **A. Yeah. I don't know, sir.**

15 Q. All right.

16 **A. I never had any CIs, quote, unquote,**

17 **here.**

18 Q. All right. If we look at the next inmate

19 request slip, that's to a Lieutenant Massey?

20 **A. Yes, he was here during that time. And**

21 **his wife was too.**

22 Q. He's not here anymore?

23 **A. I think they're both retired.**

Page 55

1 Q. And the next document in the file is an

2 Inmate Visitation Log. Do you have any idea, sir,

3 why an officer signs off on certain inmate visits

4 but not on others?

5 **A. Not a clue.**

6 Q. All right. It does seem that in the

7 visits from 12:40 on August 24th, 2012, on through

8 14:20, it looks like the same signature. Do you

9 know whose signature that is on the right-hand

10 side of the page besides, for example, the inmate,

11 E. Allen?

12 **A. Does it say Watson? Or Winter? I don't**

13 **know. I know they have a Watson here. I'm just**

14 **kind of going off...**

15 Q. All right. You know there is a Watson

16 here?

17 **A. But I don't know, I mean.**

18 Q. All right.

19 **A. Can't tell you any better than you can**

20 **probably.**

21 Q. Okay. In August of 2012 did you know

22 there to be gang activity at this facility?

23 **A. Yes.**

Page 56

1 Q. Were you familiar with a gang called the

2 Brothers of White Warriors?

3 **A. Yes.**

4 Q. What sort of activity would those gangs

5 engage in --

6 **MR. FREDERICKS:** Objection to form.

7 Q. -- at the facility?

8 **MR. FREDERICKS:** Sorry. Objection to

9 form.

10 Q. To your knowledge.

11 **A. They're all the same. Gangsters,**

12 **Disciples, BOWW, FCC, they're all running drugs.**

13 **But they all cross paths. You can get a Blood and**

14 **a Supremacist working together to get drugs. It's**

15 **nothing like you've ever seen in your life.**

16 **It's -- they're all about their gang until it**

17 **becomes drugs, and then they work together. It's**

18 **weird.**

19 Q. In the August of 2012 time period, did

20 the gangs fight one another or...

21 **A. Not any formal fights that I've**

22 **investigated. In this prison I'm sure there's a**

23 **couple black guys out there, but not that I've**

Page 57

1 **investigated.**

2 Q. So the gangs were organized for purposes

3 of smuggling drugs in here?

4 **A. That's a big thing. I mean that's where**

5 **the money comes from.**

6 Q. Yeah. All right. You mentioned earlier

7 in your deposition testimony that in addition to

8 interviewing the inmates, you spoke with

9 corrections officers in connection with doing your

10 investigation?

11 **A. That's correct. Corporal Coulombe, the**

12 **guys that were working this case together.**

13 **Absolutely. And you can -- on almost all these**

14 **interviews, you can identify the other corrections**

15 **employee with me.**

16 Q. Right. But did you, for example,

17 interview Kathy Bergeron who was doing rounds on

18 August 24th, 2012, in the afternoon?

19 **A. They formally as part of -- they formally**

20 **submit a report to me. There was no verbal --**

21 **there's no audio. There's no recording. They**

22 **submit a -- some of the reports we've been talking**

23 **about on what they observed and what they didn't.**

Page 58

1 **It becomes part of the file. They give a written**
2 **narrative. So I don't write down what they tell**
3 **me, and they write it down themselves.**
4 Q. So there is -- Exhibit 1 does contain a
5 statement from Kathy Bergeron, and that's what you
6 would have received from her and relied upon?
7 **A. If there's a statement in here from Kathy**
8 **Bergeron, it would have been her statement.**
9 Q. Okay. All right.
10 **MR. KING:** Okay. Off the record.
11 (Discussion off the record.)
12 Q. Back on the record. Did you make any
13 factual findings resulting from your investigation
14 into the assault on Jonathan Leite?
15 **MR. FREDERICKS:** Objection to form. Go
16 ahead.
17 **A. I indicted three people, and they all**
18 **pled out for these charges of first-degree assault**
19 **and conspiracy to commit the crime of.**
20 Q. Okay. So what -- can you just tell me
21 what findings you made as a result of your
22 investigation?
23 **A. That -- off memory, that Johnathan**

Page 59

1 **Gelinas, it happened in his cell. He had an overt**
2 **act of something like this (demonstrating).**
3 Q. Sir, the record isn't going to reflect
4 what you just did.
5 **A. Okay. Moving my hand around my face in**
6 **like a motion, horizontal motion.**
7 Q. A slicing motion?
8 **A. Slicing motion. Okay.**
9 Q. Yeah.
10 **A. And that Matthew Garcia and Sean Lavallee**
11 **entered his cell, that Jonathan Leite wasn't**
12 **assigned to but was in, and assaulted him.**
13 Q. Okay.
14 **A. That was definitely the finding.**
15 Q. Okay. And do you know what the sentence
16 is that each defendant served as a result of this?
17 **A. I don't have the mittimuses here.**
18 Q. I'm sorry, what did you say?
19 **A. I do not have the mittimus --**
20 Q. All right.
21 **A. -- here. I don't know.**
22 Q. Okay.
23 **A. They're at the County Attorney's Office**

Page 60

1 **I'm sure.**
2 Q. Are the interview recordings and the
3 video footage kept separately from the paper file
4 or are they all in one file?
5 **A. I don't know how they get archived. I'm**
6 **not the keeper of the records. I would submit the**
7 **file. I'd put together a file, submit it to the**
8 **County Attorney's Office. In there, there would**
9 **have been a binder or in this case, definitely**
10 **with the medical records, two, maybe three, at**
11 **least two, and there would have been plastic**
12 **sleeves that would have held everything that was**
13 **not paperwork.**
14 Q. And where is the file pertaining to your
15 investigation physically kept now?
16 **A. It's archived at state police**
17 **headquarters.**
18 Q. Is that in Concord?
19 **A. It is.**
20 Q. All right.
21 **A. I'm told minus the medical records, which**
22 **I may -- it was a stack this high (indicating). I**
23 **may not have archived the medical records. Those**

Page 61

1 **may have just gone, for the purposes of time, to**
2 **the prosecutor.**
3 Q. Understood.
4 **MR. KING:** All right. I don't have
5 anything further. Thank you.
6 **MS. CUSACK:** Thank you.
7 **MR. FREDERICKS:** All set.
8 (Deposition concluded at 1:57 p.m.)
9
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1 CERTIFICATE OF WITNESS
2
3 I, Michael Cote, have read the foregoing
4 transcript of deposition taken on Wednesday,
5 September 20, 2017, at the Northern NH
6 Correctional Facility, Berlin, New Hampshire, and
7 do hereby swear/affirm it is an accurate and
8 complete record of my testimony given under oath
9 in the matter of Leite v. Goulet, et al.,
10 including any and all corrections that may appear
11 on those pages denoted as "Corrections."
12
13 _____
14 Michael Cote
15 STATE OF _____
16 COUNTY OF _____
17
18 Subscribed and sworn to before me this _____ day
19 of _____, 2017.
20
21 _____
22 Notary Public _____ J.P. _____
23 My Commission Expires: _____

1 CORRECTION AND SIGNATURE PAGE
2 **DEPOSITION:** Michael Cote
3 **DATE OF DEPOSITION:** September 20, 2017
4 PAGE LINE NOW READS SHOULD READ
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19
20 Dated this _____ day of _____, 2017.
21
22 _____
23 Michael Cote

1 C E R T I F I C A T E
2 I, Celeste A. Quimby, a Licensed Court
3 Reporter of the State of New Hampshire, do hereby
4 certify that the foregoing is a true and accurate
5 transcript of my stenographic notes of the
6 deposition of Michael Cote, who was first duly
7 sworn, taken at the place and on the date
8 hereinbefore set forth.
9 I further certify that I am neither attorney
10 nor counsel for, nor related to or employed by any
11 of the parties to the action in which this
12 deposition was taken, and further that I am not a
13 relative or employee of any attorney or counsel
14 employed in this case, nor am I financially
15 interested in this action.
16 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
17 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY
18 ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR
19 DIRECTION OF THE CERTIFYING REPORTER.
20
21
22
23 CELESTE A. QUIMBY, LCR No. 17

	30:5	52:18;53:23;55:7,21;56:19; 57:18	birthday (1) 36:5
A	almost (1) 57:13	authored (1) 53:11	black (1) 56:23
able (2) 36:12,12	Although (2) 26:10;43:23	away (2) 12:6;13:15	blankets (1) 45:14
Absolutely (2) 33:3;57:13	amongst (1) 24:3	B	block (14) 15:3;28:1,6,12;29:11,16; 35:16;38:2;40:9;50:17;52:7, 19,22;53:23
access (1) 30:9	Androscoggin (1) 25:15	baby-sit (1) 32:16	blood (2) 14:7;56:13
according (3) 11:15;12:10;42:5	answered (1) 33:14	back (15) 11:8;19:13;21:5;23:18,19; 25:1,3;27:11;30:21;34:8,10; 39:15;45:13;48:22;58:12	blue (1) 23:20
accurate (2) 11:16;62:7	anymore (1) 54:22	bad (1) 43:21	board (1) 5:9
accurately (3) 19:1;36:7;51:4	apparently (1) 42:1	Badly (3) 52:13,14,15	body (1) 17:8
act (2) 13:8;59:2	appear (3) 26:17;50:12;62:10	balloon (5) 22:21;23:15,17;26:11,17	border (1) 26:22
activities (2) 18:20;38:3	appears (2) 45:9;51:10	ballooned (1) 24:1	both (1) 54:23
activity (9) 9:11,15;15:20;21:23; 31:13;44:18;45:21;55:22; 56:4	appreciate (1) 14:10	balloons (1) 23:21	bottom (3) 11:15;31:18;40:12
actually (4) 12:2;21:9;24:21;40:3	approximately (3) 10:10;42:18;44:7	based (3) 21:8,14;46:14	bound (2) 23:12;26:19
addition (1) 57:7	archived (3) 60:5,16,23	basically (1) 6:1	bowel (1) 27:3
advised (2) 8:8;33:19	area (2) 29:3;30:3	beat (1) 16:15	BOWW (1) 56:12
Advocacy (1) 5:10	around (7) 41:2,8;44:8,12,18;45:11; 59:5	beaten (1) 52:9	box (1) 51:1
aftermath (2) 17:14;31:17	assault (36) 5:14,20;6:4,9;7:5;8:11; 9:7;13:15,23;16:9,11,19; 17:14;18:2,11;21:7;24:14; 26:9;27:13;28:4,7;31:17; 33:1;36:22;38:4,15;39:3,10; 46:3,9;47:7,18,22;50:1; 58:14,18	beating (2) 17:4;50:18	break (3) 20:9;21:18;48:20
afternoon (1) 57:18	assaulted (5) 12:20;13:5;32:18;42:14; 59:12	become (1) 52:19	brief (2) 20:8;21:18
Again (12) 8:15;21:1;26:18;32:13; 34:16;39:13;43:10;45:13; 47:17;49:23;53:8,10	assaults (1) 6:6	becomes (3) 10:20;56:17;58:1	briefly (1) 20:7
agency (1) 34:5	assigned (2) 6:2;59:12	becoming (2) 52:7,23	bring (2) 35:7;45:10
ago (1) 39:6	assume (1) 20:3	bed (1) 28:22	bringing (3) 25:1,3;45:19
agree (1) 46:3	attached (1) 19:7	began (1) 16:14	Brothers (1) 56:2
ahead (7) 9:14;14:3;20:23;24:6; 45:2;54:3;58:16	attacker (1) 46:20	beginning (4) 39:17;40:7,9;44:6	brought (1) 27:14
airplanes (1) 26:23	Attorney (2) 6:21;39:3	behind (3) 46:17;47:3,5	Broyer (9) 18:10,19;19:2;21:19; 24:13,19;27:12,12;29:4
al (1) 62:9	Attorney's (2) 59:23;60:8	Bergeron (4) 37:12;57:17;58:5,8	brunt (1) 47:1
alerted (2) 53:2,5	attributable (3) 26:4,8,9	Berlin (1) 62:6	built (1) 50:6
Alfeo (16) 15:15;16:3,7,9,18,22;17:3, 7,12,16,20;18:1;19:14,22; 21:6,8	audio (1) 57:21	besides (1) 55:10	bunk (6) 17:18,22;31:18;45:9,13, 14
allegation (1) 52:22	August (20) 5:16;7:6;8:12,21;9:7; 10:9;11:2,18;12:20;18:10; 29:21;35:16;38:2;40:9;	best (2) 46:23;51:19	burned (1) 31:4
Allen (1) 55:11		better (4) 24:9;28:14;29:3;55:19	C
allowed (1)		big (2) 53:20;57:4	called (2) 10:5;56:1
		binder (1) 60:9	

<p>came (6) 16:6;36:15,17;50:19; 53:10;54:5</p> <p>camera (1) 43:16</p> <p>can (24) 8:7,18;15:6;20:6,7;23:11; 24:8;25:19;27:6;30:1;34:19; 35:11;39:15;41:1;42:12; 46:3;48:20;51:20;52:11; 55:19;56:13;57:13,14;58:20</p> <p>capacity (4) 4:17;6:2;23:6;54:8</p> <p>Case (8) 6:22;10:22;11:7,11;50:6, 8;57:12;60:9</p> <p>cassette (1) 31:1</p> <p>caught (2) 29:2;39:13</p> <p>CD (2) 31:2,4</p> <p>cell (50) 12:12,20;13:4,10,15,19; 14:7;15:4,7;16:10;17:5; 20:14,21;21:2;24:20;31:18, 22;38:15,18,19,22,23;39:9, 9,10;40:19;41:2,8;42:2,9,9, 19;43:3,13;44:5,8,18,23; 45:6,7,8,10,11,13,22;46:10, 11;50:5;59:1,11</p> <p>cellophane (1) 23:23</p> <p>Center (1) 5:10</p> <p>certain (1) 55:3</p> <p>CERTIFICATE (1) 62:1</p> <p>cetera (1) 6:6</p> <p>change (1) 11:11</p> <p>charge (1) 49:17</p> <p>charged (3) 13:7,8;28:19</p> <p>charges (2) 36:19;58:18</p> <p>cheeks (1) 22:19</p> <p>Child (1) 5:10</p> <p>choice (2) 22:13,14</p> <p>chooses (1) 24:10</p> <p>CI (1) 54:12</p> <p>CIs (1) 54:16</p> <p>clean (1) 29:19</p>	<p>cleaned (1) 21:4</p> <p>cleaner (2) 30:9,10</p> <p>cleaners (2) 30:5,12</p> <p>cleaning (5) 29:7,10,18,20;30:10</p> <p>cleanup (2) 14:6,16</p> <p>client (1) 50:6</p> <p>clip (1) 47:12</p> <p>clips (1) 49:4</p> <p>closest (1) 17:9</p> <p>closet (4) 28:12,15,21;30:13</p> <p>clothing (2) 45:9,12</p> <p>clue (1) 55:5</p> <p>collaborated (1) 36:21</p> <p>colors (2) 29:13,15</p> <p>coming (6) 26:22;38:22;41:18;44:3; 46:18;50:4</p> <p>Commission (1) 62:23</p> <p>commit (1) 58:19</p> <p>common (3) 25:20;26:23;29:3</p> <p>complete (2) 12:7;62:8</p> <p>completed (1) 10:19</p> <p>completion (2) 12:1,3</p> <p>concluded (1) 61:8</p> <p>conclusion (2) 46:16;47:18</p> <p>Concord (1) 60:18</p> <p>conduct (5) 11:9;14:19;34:2,23;35:1</p> <p>conducted (9) 6:9;9:11;15:14,20;18:9, 20;22:1;31:9,13</p> <p>conducting (3) 32:17,21;35:14</p> <p>confidential (2) 53:23;54:4</p> <p>confuse (1) 48:9</p> <p>confusing (1) 34:17</p> <p>confusion (1)</p>	<p>45:11</p> <p>connection (5) 9:19;14:15;28:8;49:19; 57:9</p> <p>considering (1) 33:11</p> <p>consists (1) 8:10</p> <p>conspiracy (2) 13:7;58:19</p> <p>contain (1) 58:4</p> <p>contained (2) 49:6;50:12</p> <p>contains (4) 6:23;7:3;9:3;40:7</p> <p>Continuation (3) 10:6;11:20;39:18</p> <p>continued (1) 46:12</p> <p>control (1) 29:3</p> <p>controlled (1) 30:3</p> <p>Coos (1) 5:11</p> <p>Corporal (1) 57:11</p> <p>CORRECTION (1) 63:1</p> <p>Correctional (17) 5:9,16;10:9;14:19,20; 18:4;22:7;26:2;27:23;28:10; 30:4;32:23;33:5,16;34:1,22; 62:6</p> <p>Corrections (13) 5:23;6:4;15:3,9;30:7; 32:11,11;34:4;51:5;57:9,14; 62:10,11</p> <p>correctly (4) 14:11;36:16,20;52:3</p> <p>corroborated (1) 36:13</p> <p>COTE (9) 4:1,7;6:16,19;7:3;62:3,14; 63:2,23</p> <p>C-o-t-e (1) 4:7</p> <p>Coulombe (7) 18:9;39:19;40:23;44:7,18; 47:11;57:11</p> <p>Coulombe's (2) 40:7;41:23</p> <p>count (2) 18:3;33:22</p> <p>County (5) 5:11;6:21;59:23;60:8; 62:16</p> <p>couple (1) 56:23</p> <p>course (5) 14:19;31:13,21;41:5; 52:17</p>	<p>create (1) 34:17</p> <p>created (1) 6:11</p> <p>Crime (8) 5:13;11:4,7;14:23;28:20; 53:2,5;58:19</p> <p>criminal (4) 7:16;8:4,13;9:19</p> <p>cross (1) 56:13</p> <p>current (1) 4:14</p> <p>currently (1) 4:15</p> <p>CUSACK (15) 7:9,12,14,20,23;19:17; 20:10;48:6,18,20;49:4,8,10; 52:13;61:6</p> <p>cut (3) 22:21;23:17,18</p>
D			
<p>Dartmouth-Hitchcock (1) 25:16</p> <p>date (8) 4:22;11:2,3,4,6,8,23;63:3</p> <p>Dated (1) 63:20</p> <p>day (8) 12:2,2,3,3;20:14;30:15; 62:18;63:20</p> <p>dayroom (2) 17:18;32:1</p> <p>dead (1) 17:13</p> <p>December (3) 4:13,21,23</p> <p>decision (1) 49:14</p> <p>deep (3) 26:20;37:7,8</p> <p>defecated (1) 27:10</p> <p>defendant (1) 59:16</p> <p>definitely (4) 14:5;53:16;59:14;60:9</p> <p>demonstrating (1) 59:2</p> <p>denoted (1) 62:11</p> <p>Department (8) 4:12;5:23;6:3;15:9;32:10, 11;34:4;51:5</p> <p>departments (1) 34:3</p> <p>depending (1) 46:21</p> <p>depo (1) 49:12</p> <p>deposed (1)</p>			

4:3 deposition (6) 8:10;57:7;61:8;62:4;63:2, 3 described (1) 22:5 describes (1) 44:19 describing (2) 41:11;44:8 description (1) 40:8 designated (1) 53:22 destroyed (2) 10:20;11:21 details (1) 19:21 detected (3) 33:5,16,21 detective (9) 4:20;5:2,5;9:12,21;15:21; 18:21;22:1;31:14 determination (1) 33:22 determine (6) 27:18;32:18,22;35:15; 41:11;47:21 determined (2) 26:7;39:7 determining (2) 33:5,16 different (5) 12:2;23:13,21;29:13,15 directly (2) 16:10;29:2 directors (1) 5:9 dirty (1) 50:17 Disciples (1) 56:12 discovered (1) 14:23 discussed (1) 19:16 Discussion (3) 6:15;19:12;58:11 disk (2) 31:1,2 divulged (1) 54:13 dockets (1) 11:10 document (14) 8:20;9:3;10:1,3,12;11:1; 12:18;16:5;18:16;37:23; 51:9,15,21;55:1 documents (5) 6:19,21,23;7:2;8:7 done (4) 12:9;15:2;32:23;52:8 door (1)	36:23 DOUGLASS (1) 20:6 down (7) 17:4;40:12;44:1;51:18,18; 58:2,3 download (2) 49:14,15 Dragnet (1) 38:17 drink (1) 29:7 drug (3) 22:13;23:8;26:17 drugs (15) 22:20;25:1,4,9,12,15;26:4, 8,11,16;27:2;56:12,14,17; 57:3 DSSP (1) 10:5 due (1) 39:3 duly (1) 4:2 during (14) 4:18;5:11,12,22;6:5; 22:14,16;33:21;36:22;43:3; 46:4;47:18;50:5;54:20 duties (1) 28:9 dying (1) 17:13	27:7 enforcement (1) 34:5 engage (1) 56:5 enough (1) 44:14 entail (1) 33:4 enter (1) 42:2 entered (2) 40:19;59:11 entering (2) 44:5,22 enters (2) 43:20;45:6 entire (1) 14:7 Especially (1) 30:14 established (1) 20:12 et (2) 6:6;62:9 evaluating (3) 34:1,22;35:1 even (1) 54:6 eventually (1) 27:2 everybody's (1) 54:7 evidence (14) 14:1,6,14,22;21:1,2;32:2, 6;47:22;48:23;49:14,15,19, 21 exactly (1) 51:3 EXAMINATION (2) 4:4;26:6 example (2) 55:10;57:16 excluding (3) 7:6;8:7,13 excuse (1) 14:20 Exhibit (6) 6:16,20;7:3;8:9;9:2;58:4 exist (1) 48:4 existence (1) 47:15 existing (1) 48:10 exists (2) 20:4;48:12 exited (1) 45:13 exiting (1) 44:23 exits (3) 42:15;45:7,8	experience (2) 24:7;27:21 expert (1) 53:17 Expires_ (1) 62:23
F			
face (3) 17:4;43:14;59:5 facilities (1) 22:8 Facility (11) 5:9,16;10:9;14:20;22:14; 26:3;27:23;28:10;55:22; 56:7;62:6 facing (1) 46:20 fact (1) 26:8 facts (1) 38:18 factual (3) 20:19;42:7;58:13 Fair (1) 44:14 falsification (2) 14:5,14 familiar (1) 56:1 fan (2) 27:15,19 far (5) 13:12;21:2;23:6;36:11; 51:17 FBI (1) 53:17 FCC (1) 56:12 feel (1) 26:19 feet (1) 17:8 fellow (1) 35:18 Felony (1) 6:22 fictitious (1) 36:20 fifth (2) 51:18,18 fight (4) 24:15,20;25:12;56:20 fight (1) 56:21 figure (1) 39:14 figured (1) 50:1 file (24) 6:11;7:3;8:10,19;15:11, 13;18:7,7;20:3;30:18;37:5;			

39:17;49:1,6;50:11,20;53:7; 55:1;58:1;60:3,4,7,7,14 finally (1) 18:1 find (3) 46:15;51:7;53:21 finding (6) 20:19;21:6,16;42:7;43:2; 59:14 findings (2) 58:13,21 finger (2) 22:21;42:20 finish (2) 12:2,8 finished (4) 12:17;16:3;18:14;37:22 first (5) 6:20;37:10;40:23;47:2,8 first-degree (1) 58:18 Flipping (1) 35:10 floor (2) 17:5;38:5 following (1) 45:3 follows (1) 4:3 foot (1) 45:15 footage (9) 38:2,8,11;40:8,13;41:10; 47:15,21;60:3 forced (1) 29:6 foregoing (1) 62:3 forgot (1) 7:18 form (17) 9:13;10:6;11:20;14:2; 15:5;20:22;23:8;24:5;25:18; 27:5;29:23;30:21;45:1;54:2; 56:6,9;58:15 formal (2) 10:20;56:21 formally (2) 57:19,19 forth (2) 23:18,19 forward (3) 6:10;36:15;37:4 found (4) 28:3;33:20;35:2,7 four (3) 26:20;42:4;44:2 fourth (1) 51:17 frame (2) 22:15;45:16 FREDERICKS (19) 7:18;9:13;14:2;15:5;	20:22;24:5;25:18;27:5; 29:23;35:11;37:9;39:20; 45:1;51:19;54:2;56:6,8; 58:15;61:7 full (1) 41:14 further (4) 16:18;19:21;50:10;61:5 future (1) 52:1 G gain (1) 24:18 gang (3) 55:22;56:1,16 gangs (3) 56:4,20;57:2 Gangsters (1) 56:11 Garcia (3) 30:8;50:16;59:10 gave (1) 4:22 Gelinas (4) 13:3,6;27:13;59:1 general (1) 28:23 generally (1) 30:2 generic (1) 53:19 gentleman (2) 36:4;47:4 gets (1) 52:9 girlfriend (1) 22:18 given (2) 32:15;62:8 glove (1) 22:21 goes (5) 8:2;11:8;42:22;43:11,23 good (1) 9:2 Goulet (1) 62:9 grab (1) 45:9 grabbed (1) 45:12 grace (1) 37:3 green (1) 23:20 grunts (1) 16:14 guess (8) 9:15;24:8;33:11;35:3,7; 43:16;46:14,23 guessing (4)	21:10,10,13,15 guys (7) 41:13,14,15,16;50:15; 56:23;57:12 H Hampshire (15) 4:9,12,19;5:5,16;9:12,21; 10:8;15:21;18:21;22:1;26:2; 27:23;28:10;62:6 hand (2) 6:18;59:5 handle (1) 12:6 handwriting (1) 53:17 Handwritten (7) 10:15,18;11:17,21;50:11, 12:51;10 hanging (4) 41:2,7;44:8,12 happened (8) 13:20;14:1;21:8;24:14; 36:18;38:11,19;59:1 happens (2) 14:19;22:7 hats (2) 5:7,21 head (1) 17:9 headed (1) 8:20 header (1) 11:10 headquarters (1) 60:17 head's (1) 52:1 hear (2) 21:12,12 heard (1) 17:1 hearing (2) 16:14;21:14 heavily (1) 50:3 held (1) 60:12 hell (1) 16:15 help (3) 41:18;50:7,7 helpful (1) 41:17 hereby (1) 62:7 heroin (2) 36:16;39:14 hidden (2) 27:16,19 hide (4) 28:1,11,14,21	hiding (3) 28:16,20;29:3 high (1) 60:22 himself (2) 41:18;50:7 history (3) 7:16;8:5,13 hit (3) 46:17;47:3,5 Hmm (1) 53:3 hold (2) 25:2;48:6 holding (2) 36:16,17 homicide (1) 5:13 horizontal (1) 59:6 Hospital (1) 25:16 hospitalized (1) 25:15 hour (1) 42:18 housing (2) 23:2;29:14 How's (1) 27:9 hurt (1) 16:23 I idea (1) 55:2 identification (1) 6:17 identify (3) 38:22;50:4;57:14 identifying (1) 50:9 imagine (1) 53:10 immediate (2) 17:14;31:17 immediately (1) 37:16 incident (4) 37:5,10,17,20 included (1) 53:7 including (1) 62:10 indicate (1) 48:12 indicates (1) 47:11 indicating (2) 53:18;60:22 indicted (1) 58:17
--	--	--	--

individual (1) 7:14	60:2	17:4,8,13,17,20;18:2,11; 20:15,20;21:7;24:23;25:8; 29:6;31:18,22;32:19;33:1,6, 17;36:23;38:4;40:19;42:8; 43:20;44:5;58:14;59:11	layers (2) 23:13;26:20
individuals (1) 7:16	interviewed (1) 9:19	Jonathan's (1) 26:3	leading (1) 52:18
infer (1) 43:16	interviewing (2) 39:1;57:8	Joseph (4) 18:10,19;19:2;21:19	leads (1) 47:6
inferring (1) 25:7	interviews (5) 9:16;11:10;19:6;30:16; 57:14	July (3) 4:17,23;5:1	leaned (1) 38:5
informant (1) 54:5	into (6) 15:4;47:14;50:11,11; 52:21;58:14	jumped (1) 35:6	learn (5) 14:1,14;28:3,8;52:17
informants (1) 53:23	investigate (2) 5:19;41:21	jumpsuit (1) 41:14	learned (3) 25:14;28:15;31:21
ingested (4) 23:7,10;26:11,16	investigated (4) 5:14;22:9;56:22;57:1		least (4) 22:14;48:9,15;60:11
ingesting (1) 22:5	investigating (1) 38:15	K	leave (2) 14:22;20:10
injured (1) 51:23	investigation (41) 6:9,12;7:4;8:11;10:6; 11:20;13:23;14:15;20:20; 25:13;31:22;32:3,18,22; 33:4,15,23;34:21;35:2,14; 39:18;40:1,4,6,18;41:12,13, 19,23;42:8;46:15;47:10; 49:20;50:2,15;52:17,21; 57:10;58:13,22;60:15	Kathleen (1) 37:12	leaves (3) 43:13;46:10,11
injuries (3) 33:6,17;39:4	investigations (2) 9:20;41:20	Kathy (3) 57:17;58:5,7	leaving (2) 42:14;44:4
injury (1) 47:1	investigator (13) 5:11;6:1;18:9;34:5;38:16; 39:2,19;40:7,23;41:22;44:7, 18;47:11	keep (2) 30:5;35:13	led (1) 50:2
inmate (50) 7:1;9:6;12:19;13:14,18; 15:15;16:2,22;17:3,12,16; 18:1,9;22:23,23,23;24:13, 19;25:3,4,5,11,14;27:12,12, 13,14;29:4,5;30:8;31:16; 35:23;41:14;42:13;43:13, 16;44:17;45:5,6,7,8,12; 46:10,17;51:11;52:7;54:18; 55:2,3,10	investigators (2) 32:12;50:8	keeper (1) 60:6	left (3) 12:12;42:21;43:3
inmates (27) 13:2;14:20;19:8;21:9; 22:9,11;23:5;24:4;27:23; 28:11;33:20,21;35:15;41:1, 7,11;44:1,3,8,12,22;46:18, 20;47:21;50:4,13;57:8	involved (2) 38:19;43:17	kept (7) 29:10,21,21;30:13,22; 60:3,15	Leite (35) 5:15;7:5;8:12;9:7;12:20; 13:4,20;16:19,23;17:4,13, 17,21;18:3,11;20:15;21:7; 24:23;25:3,11,14;31:18; 32:19;33:2,6,17;36:23;38:4; 40:19;41:17;42:8;46:17; 58:14;59:11;62:9
inmate's (1) 52:22	irrelevant (1) 39:4	kind (2) 39:3;55:14	Leite's (9) 7:6;17:8;25:9;29:6;31:23; 45:9,12,13;47:2
inquired (1) 25:2	issue (1) 39:12	KING (17) 4:5;6:14;7:22;8:9;19:11; 20:8,12;34:7;39:3,21;48:17, 22;49:5,9,13;58:10;61:4	liaison (5) 5:8,22;27:22;28:9,23
inquiry (1) 47:14	J	kiss (1) 22:22	Lieutenant (1) 54:19
instance (1) 15:2	January (1) 36:8	knew (2) 16:22;24:14	life (1) 56:15
instructions (2) 32:5,6	Jeffrey (1) 37:17	knowledge (2) 39:1;56:10	light (2) 18:2;35:7
instrumental (1) 41:16	job (1) 5:4	known (1) 51:4	lights (1) 47:6
insurance (1) 23:13	Johanan (9) 35:22,23;36:7,8,11,15; 39:7;42:1;45:20	knows (1) 25:11	line (4) 51:18,18;54:10;63:4
intact (1) 23:10	John (1) 7:1	L	little (1) 34:19
interrupt (1) 20:6	Johnathan (2) 13:3;58:23	last (4) 4:17;6:22;32:13;54:10	locker (1) 45:15
interval (2) 43:3;46:2	joint (1) 41:12	lasted (1) 16:19	Log (1) 55:2
interview (23) 9:5,17;10:4,13,21;11:1, 18;12:11;15:14;16:6;17:17; 18:8,19;19:14,22;21:6,19; 31:9;36:7;41:21;47:4;57:17;	jointly (2) 32:10,13	later (5) 17:17;18:3;23:1;25:16; 26:6	long (3) 21:7;25:6;42:8
	Jonathan (37) 5:15;7:5,6;8:11;9:7; 12:20;13:4,20;16:19,23;	latex (1) 26:20	longer (2) 28:6;43:12
		Lavallee (2) 50:16;59:10	look (17) 8:3;10:23;12:16;15:7; 19:13;31:5;35:4,5,21;37:19; 39:15,23;40:12,22;41:10; 53:14;54:18
		law (1) 34:4	looked (4)
		layer (1) 23:14	

15:4,19;39:16;49:23 looking (9) 10:1;12:15;36:19;38:17, 18,21;40:4;50:14;54:11 looks (1) 55:8 lot (7) 22:17;29:1;41:1,7;44:8, 12;51:15 lying (2) 17:4,21	mentioned (2) 5:21;57:6 metal (3) 27:15,19;29:6 mezzanine (3) 44:2,3;46:19 MICHAEL (6) 4:1,7;62:3,14;63:2,23 might (1) 48:18 mind (2) 22:12;47:17 minus (1) 60:21 minute (1) 6:18 minutes (20) 16:20;21:12,13;41:1,5; 42:5,15,18;43:7,19,20,21; 44:2,10,12;45:10,22;46:22; 47:2,8 mittimus (1) 59:19 mittimuses (1) 59:17 money (1) 57:5 months (1) 28:4 mop (4) 28:12,15,21;30:13 more (6) 34:19;44:17;51:4;52:8,19, 23 morning (1) 10:10 most (3) 6:5,7;11:9 motion (4) 59:6,6,7,8 mouth (1) 34:9 move (2) 37:4;47:9 movement (1) 27:3 moving (2) 17:21;59:5 multiple (1) 5:12 must (1) 54:11	narrative (29) 9:15,17;10:2,4,19;11:1, 14;12:10,14;15:13,18,19; 16:2;18:7,14,17;19:1,14,20; 21:19,23;24:22;25:10; 27:12;31:8,12;36:6;37:19; 58:2 narratives (2) 9:18;21:11 NCIC (1) 7:12 near (1) 36:23 need (2) 32:14;39:1 needed (1) 32:15 New (15) 4:9,12,19;5:5,16;9:12,21; 10:8;15:21;18:21;22:1;26:2; 27:22;28:10;62:6 next (14) 15:2;37:11;40:22;41:1,5; 44:10,11;45:10,22;51:9; 52:6,10;54:18;55:1 NH (1) 62:5 Nicholas (2) 27:14;31:9 nickname (1) 35:17 nine (1) 48:8 Northern (7) 5:8,15;10:8;26:2;27:22; 28:10;62:5 Notary (1) 62:22 note (7) 50:14,19;51:7,10;53:6,11; 54:11 notes (8) 10:14,15,18,20;11:18,22; 50:11,12 notified (2) 6:3,8 number (17) 11:7;16:11;19:15;20:21; 21:5;24:20;31:19,22;38:16, 18,19;40:19;42:2,9;43:13; 44:9,23	20:14;31:17;57:23 obviously (9) 5:7;6:4,7;12:7;14:8,16; 19:9;28:4;29:18 occur (1) 6:8 occurred (17) 5:15;7:5;8:12;13:15;14:6, 16;16:10,11;28:4;38:15,23; 39:10;47:2,7,18;50:1,3 occurring (2) 10:13;38:3 October (5) 11:16,19;15:14;18:8;28:3 off (18) 6:15;8:16;12:23;19:11,12; 22:22;43:14;44:3;45:12; 46:10,11;49:17;50:21;55:3, 14;58:10,11,23 Office (4) 6:21;47:5;59:23;60:8 officer (4) 15:3;34:2,22;55:3 officers (5) 18:4;32:23;33:5,16;57:9 old (1) 35:18 older (1) 36:4 Once (1) 10:19 one (17) 5:8,21;13:9;19:4;23:15, 16;27:7;30:14;35:15;42:1; 43:13;44:2,4;46:18;49:11; 56:20;60:4 ones (2) 13:9;19:7 ongoing (1) 46:9 onto (2) 38:5;40:22 opinion (2) 33:8,11 opportunity (3) 12:13;18:13;51:13 opposite (1) 23:18 organized (1) 57:2 original (2) 11:8;26:1 others (1) 55:4 out (18) 7:17;12:8;16:15;27:7; 35:6;38:22;39:14;41:18; 43:15;45:15;46:16;47:6; 50:5;51:7,16;53:21;56:23; 58:18 outlined (1) 54:7 outside (4)
M			
maintained (1) 48:23 Major (1) 5:13 majority (1) 47:7 makes (1) 11:12 making (1) 43:8 man (1) 54:12 many (4) 5:7;11:9,10;30:5 mark (1) 6:14 marked (2) 6:16,19 marking (1) 7:3 Massey (1) 54:19 math (1) 42:16 matter (1) 62:9 Matthew (1) 59:10 may (7) 12:1;20:8;40:17;60:22,23; 61:1;62:10 maybe (2) 24:8;60:10 mean (20) 14:4,8;24:9;25:21;26:23; 28:5,19;30:23;31:1;33:19; 35:1;38:14,21;42:12,16; 46:23;53:1;54:4;55:17;57:4 means (1) 43:12 medical (10) 7:7;8:5,13;25:21;26:6; 33:10;39:5;60:10,21,23 meet (2) 22:17,19 member (2) 5:10;30:4 memory (4) 12:23;36:19;50:21;58:23	N	O	
	name (10) 4:6,7;9:6;13:3;15:15; 27:14;35:19;36:1;39:8; 54:12 named (2) 7:1;18:9 narcotic (1) 36:17	oath (1) 62:8 Objection (13) 9:13;14:2;15:5;20:22; 24:5;25:18;27:5;29:23;45:1; 54:2;56:6,8;58:15 objects (2) 28:11,16 observed (3)	

16:10;17:10;22:17;23:5 over (12) 13:20;20:15;21;26:22; 38:5;40:23;41:4,5;45:8,10, 22;51:14 overt (2) 13:8;59:1 own (2) 37:2;47:3	14:5,14;47:22 physically (1) 60:15 picked (1) 14:21 piece (2) 27:15,19 pill (1) 23:8 Pills (2) 23:9,22 piss (1) 50:16 place (5) 13:21;20:15;28:16,18; 52:19 placed (1) 29:5 plastic (1) 60:11 Please (3) 4:6;6:14;16:1 pled (1) 58:18 pm (1) 61:8 point (4) 42:1;43:3;46:4;49:11 Police (26) 4:10,13,16,19;5:6,8;6:1,2; 7:4;8:10;9:12,22;15:21; 18:22;22:2;27:22;28:9; 30:18;31:14;34:3,3,6;39:17; 49:1,6;60:16 police's (1) 53:7 Pops (2) 35:17;36:1 popular (2) 28:16,18 position (1) 4:14 positioned (1) 17:8 possible (2) 28:13;53:19 practice (3) 22:5;25:20;26:23 prepare (2) 9:10;10:4 prepared (12) 9:3;10:2;11:13;15:18; 18:17;21:22;31:12;37:5,11, 17;39:18;47:11 preserve (1) 11:17 preserved (2) 20:2;32:7 pretty (2) 38:17;48:5 prevent (1) 33:1 previous (1)	15:19 previously (1) 26:10 prison (3) 19:9;22:6;56:22 probably (4) 35:19;51:4;53:18;55:20 problems (2) 36:11,14 process (1) 17:15 produce (1) 8:15 producible (1) 7:15 promotion (1) 4:22 promptly (2) 33:7,17 prosecutor (1) 61:2 Public_JP_ (1) 62:22 puke (1) 24:1 puking (2) 13:20;20:15 pulled (1) 12:6 purposes (2) 57:2;61:1 pursuant (1) 42:7 put (4) 34:9;46:21;50:8;60:7	13:2;20:17;26:1 received (1) 58:6 Recess (2) 20:11;48:21 recollection (4) 37:3;39:11;49:17;51:6 record (18) 4:6;6:15;8:16;10:21;19:8, 10,11,12,13;34:18;48:22; 49:11;54:6;58:10,11,12; 59:3;62:8 recorded (4) 19:23;30:17,19;39:5 recording (6) 19:3,8,21;20:2;30:20; 57:21 recordings (4) 19:5;30:17,22;60:2 records (10) 7:7;8:5,13,14;25:22;39:5; 60:6,10,21,23 rectally (1) 23:5 red (1) 23:20 reference (1) 43:8 Referral (1) 6:22 referring (1) 43:8 reflect (2) 19:2;59:3 reflects (3) 36:7;40:18;41:23 regularly (6) 9:11,20;15:20;18:20; 21:23;31:13 related (1) 47:22 relatively (1) 14:22 relevant (1) 28:5 relied (2) 50:3;58:6 rely (1) 32:14 remains (1) 23:10 remember (16) 12:23;13:6,8;16:6;25:21; 35:19,20;36:2,4,16;40:15, 17;42:10,12;49:12;51:3 removed (1) 7:10 replied (1) 25:5 report (29) 9:5,10,16;11:2,3,6,20; 12:1;15:11;16:2;30:20;31:6, 8;35:20;37:5,10,14,17,21;
P			
packets (1) 29:12 page (11) 37:20;39:23;40:4,6,22; 41:4,22;47:10;55:10;63:1,4 pages (2) 35:10;62:11 paper (1) 60:3 paperwork (1) 60:13 part (13) 6:5,11;9:10;11:9;15:19; 18:20;20:3;21:23;25:13; 30:17;32:3;57:19;58:1 particular (1) 15:4 pass (1) 22:22 passed (2) 27:3;37:9 past (1) 6:6 paths (1) 56:13 patrol (1) 4:15 Paul (4) 15:15;19:14,22;21:6 Pause (1) 48:19 people (8) 9:18;19:9;26:21;29:1; 41:20;53:22;54:5;58:17 performing (1) 33:14 period (5) 4:18;43:9;46:4;52:18; 56:19 person (3) 22:19;53:12,18 personnel (4) 6:4;26:3;33:10;51:5 pertaining (4) 7:4;9:6;18:10;60:14 Peruses (6) 12:18;16:5;18:16;37:23; 51:15,21 photos (1) 6:23 physical (3)		Q	
		quickly (1) 14:22 Quimby (4) 27:14;29:5;31:10,16 quote (2) 20:15;54:16	
		R	
		rather (2) 15:11;24:10 read (12) 24:21;34:8,10,11;38:6,7; 51:14,19;52:3,10;62:3;63:4 reading (4) 12:22;13:1;25:10;44:11 READS (1) 63:4 realize (1) 26:12 really (4) 11:10;16:23;40:17;41:19 reason (2) 8:17;54:9 recall (3)	

38:1;39:18;40:1,4,6,18; 41:23;47:9,10;57:20 reported (1) 11:4 reporter (1) 4:2 reports (3) 7:12;35:5;57:22 report's (1) 12:7 represent (1) 30:8 represented (1) 49:10 request (3) 50:23;53:9;54:19 resided (3) 12:19;13:4,10 residence (1) 31:23 respect (1) 22:12 responder (1) 37:14 responsibilities (1) 5:4 result (2) 58:21;59:16 resulting (1) 58:13 retired (1) 54:23 returned (2) 13:19;20:14 review (7) 12:13;16:2;18:14;25:22; 32:2;37:21;40:8 reviewed (4) 21:18;38:2;49:19,20 reviewing (2) 16:3;18:15 right (93) 5:17;6:12;7:17;8:18;9:1,8, 22;10:10;11:5;12:10,15; 13:11,16,21;14:10,12;15:10, 10,22;16:11,16,20;17:1,5, 10,14,18,22;18:4,11,22; 20:4,10;21:17,20;22:2;24:4, 11,16;25:17;26:9,12,16; 27:4,8,16;28:8;29:4,20;31:3, 14,19,23;32:19;34:2;36:3; 37:1;38:18;39:10,20;40:3, 10,16,20;41:2;42:2,5,11,19; 43:4;44:9,15,19;45:23;46:5, 20,22;49:18;50:10;51:17, 23;54:9,15,18;55:6,15,18; 57:6,16;58:9;59:20;60:20; 61:4 right-hand (1) 55:9 robbed (1) 52:9 room (1)	10:8 roommate (1) 12:23 round (1) 15:8 rounds (5) 14:17,21;15:2,3;57:17 running (1) 56:12 Ryan (7) 7:1;9:6;10:2,7;11:1; 12:11;13:3 S safe (1) 26:21 Safety (1) 4:12 same (7) 11:11;23:6;45:12;53:10, 12;55:8;56:11 saving (1) 37:2 saw (4) 17:4,17;38:4;50:9 saying (1) 13:13 Sean (1) 59:10 seated (2) 16:10,13 second (3) 20:7;37:20;47:4 seconds (4) 40:20;45:6,7;47:12 Section (11) 8:3,18,22;9:2;15:11,13; 18:6,7;31:5,8;39:20 sections (1) 7:11 seem (1) 55:6 seemed (2) 16:19;34:14 Seems (2) 22:13;45:11 sell (1) 24:10 sense (2) 11:12;12:4 sentence (3) 52:6,6;59:15 separately (1) 60:3 September (2) 62:5;63:3 sergeant (9) 4:16;37:6,11,20,21;38:1, 10;49:16,21 served (1) 59:16 serves (1)	36:19 set (1) 61:7 several (1) 44:22 shank (1) 28:20 share (1) 7:21 shared (2) 24:3,9 sharpened (3) 27:15,19;29:5 sheet (4) 6:20,22,22;14:17 shirt (4) 43:14,14;46:10,11 short (1) 39:6 showed (1) 48:7 shown (1) 48:15 side (1) 55:10 sign (1) 12:8 signature (3) 55:8,9;63:1 signs (1) 55:3 similar (1) 53:14 sit (1) 32:16 Six (3) 43:19,20,21 sleeping (1) 31:18 sleeves (1) 60:12 slicing (2) 59:7,8 slip (2) 51:1;54:19 slips (1) 53:9 Smith (8) 37:6,11,17,21;38:1,10; 49:16,21 Smith's (1) 37:20 smuggling (2) 27:1;57:3 sold (1) 24:8 solution (3) 29:7,10;30:10 somebody (4) 22:18,18;24:9;30:6 someone (4) 16:15;25:6,8;52:9 sorry (3)	46:8;56:8;59:18 sort (1) 56:4 Sound (1) 52:3 speak (1) 30:2 specific (1) 34:19 specifically (1) 14:4 spelling (1) 4:8 spoke (4) 10:7;47:19;54:5;57:8 spot (1) 29:3 stack (5) 6:19,20,23;7:2;60:22 staff (1) 14:21 stairs (1) 43:15 stand (1) 18:3 standing (1) 33:22 start (2) 12:1;40:3 state (27) 4:6,10,12,16,19;5:5,8,23; 6:2;7:4;8:10;9:12,21;15:21; 18:21;22:2;27:22;28:9; 30:17;31:14;34:6;39:17; 48:23;49:6;53:7;60:16; 62:15 statement (5) 33:12;37:12;58:5,7,8 statements (1) 47:3 stating (1) 15:1 still (2) 20:4;46:9 stop (1) 52:16 strike (1) 12:12 strips (2) 23:9,22 submit (4) 57:20,22;60:6,7 Suboxone (2) 22:12;24:3 Suboxones (1) 22:6 Subscribed (1) 62:18 subsequently (1) 36:17 suffered (1) 33:6 supervisor (1)
---	---	--	--

4:15 supplied (2) 49:7,21 supplies (2) 29:18,20 supposed (1) 25:3 Supremacist (1) 56:14 sure (3) 35:19;56:22;60:1 surmise (2) 42:13;46:23 surname (1) 4:8 suspected (1) 24:19 suspicion (1) 26:2 suspicious (1) 45:21 swallows (1) 22:23 swear/affirm (1) 62:7 sworn (2) 4:2;62:18 syllabus (1) 8:2 symptoms (2) 26:3,7 system (1) 26:12 sytem (1) 25:23	test (2) 26:17;50:17 tested (1) 25:14 testified (1) 4:3 testimony (6) 15:1;36:12;39:12;43:7; 57:7;62:8 therefore (1) 14:21 though (1) 54:6 thought (3) 17:15;24:15,23 three (13) 21:12;22:20;23:13,21; 26:20,20;41:1,5;44:10,11; 45:10;58:17;60:10 throat (1) 29:6 thrown (1) 50:23 tie (3) 23:17,17,20 times (4) 5:12;22:17,20;23:13 tin foil (1) 23:23 title (1) 4:14 titled (1) 6:21 Today (1) 22:15 together (6) 39:16;50:8;56:14,17; 57:12;60:7 toilet (1) 17:9 told (30) 10:12;12:12;13:14,18; 16:9,13,18,22;17:3,12,16, 20;18:1,3;19:2;20:13;21:8, 22;24:13;27:12;29:4;30:16; 31:16;33:20,21;36:8,10,20; 39:6;60:21 took (3) 7:17;21:17;42:14 top (2) 10:23;41:4 totality (1) 46:15 towards (1) 17:9 town (1) 11:7 transcript (1) 62:4 tried (1) 53:18 trio (1) 53:9	true (1) 52:23 try (4) 25:8;34:16;48:8,12 trying (2) 35:13;47:1 turn (1) 15:10 Turning (1) 27:11 two (13) 13:2;21:12;22:20;23:13; 26:20;27:7;42:14;43:7; 46:22;47:2,8;60:10,11 two-minute (1) 43:9 type (2) 10:3;11:14 typed (1) 11:19	39:8,9;45:22 video (29) 32:2,6;36:22;38:2,8,11; 40:8,13;42:5;47:12,15,20, 23;48:2,3,7,9,12,16,23;49:2, 5,6,14,15,19,20;50:9;60:3 videos (1) 14:18 view (1) 43:15 violent (3) 52:8,19,23 visit (3) 22:17;25:1,9 Visitation (1) 55:2 visits (2) 55:3,7 vomit (3) 14:1,4,7 vomited (6) 20:20;23:11;27:10;38:5, 20;39:2 vomiting (1) 22:6 vomits (1) 23:1
T		U	wait (1) 35:11 walks (2) 43:15;45:8 wall (1) 17:10 Warriors (1) 56:2 watched (1) 40:14 Watson (3) 55:12,13,15 way (10) 21:15;23:7,18;26:22;27:9; 32:22;34:17;46:23;50:6; 53:10 weapons (3) 28:1,12,17 wear (1) 5:22 Wednesday (1) 62:4 weigh (1) 41:19 weird (1) 56:18 What's (1) 8:20 whatsoever (2) 34:1;41:19 White (1) 56:2 whole (1)
		V	vague (1) 34:14 validity (1) 39:12 Valley (1) 25:16 verbal (1) 57:20 vicinity (3)
Tab (1) 35:21 table (1) 41:18 talk (4) 20:7;35:5;41:21;46:21 talking (4) 22:15;45:5,16;57:22 tape (1) 31:1 task (2) 32:17,21 tasked (2) 33:15;38:14 tattoos (1) 41:14 telling (1) 21:13 ten (6) 16:20;21:12;46:22;48:8, 15,18 tense (1) 6:6 tenure (2) 5:12,22			

40:14 who's (1) 38:19 whose (2) 49:12;55:9 wife (1) 54:21 willingly (1) 25:12 Winter (1) 55:12 wipes (1) 43:14 within (2) 47:2,8 without (1) 50:6 WITNESS (5) 7:11,13;35:13;48:9;62:1 witnesses (2) 48:8,15 word (3) 24:9;52:10;54:12 words (3) 34:9;51:16;53:20 wore (1) 5:7 work (4) 15:8;32:10;41:15;56:17 worked (1) 5:12 working (3) 32:12;56:14;57:12 worse (1) 51:23 wrapped (1) 22:20 write (2) 58:2,3 writes (4) 38:1;40:23;41:4;52:7 writing (2) 53:14,19 written (2) 11:14;58:1 wrong (2) 48:10;50:15 wrongdoing (2) 34:12;35:2 wrote (2) 37:21;51:7	1 (7) 6:16,20;7:3;8:2,9;9:3;58:4 1:57 (1) 61:8 10 (2) 18:6,7 102 (1) 10:6 11 (4) 31:5,8;40:4,6 12 (3) 39:23;41:22;47:10 12:40 (1) 55:7 14:20 (1) 55:8 14:41 (2) 44:1,11 14:47 (2) 45:5,6 14:48 (1) 45:8 15 (1) 35:21 15:00 (2) 48:7,13 16:20 (1) 42:15 19 (1) 45:6 1936 (1) 36:5	4:21,23;32:13 2012 (24) 5:17;7:6;8:12,21;10:9; 11:3,16,18,19;12:21;15:14; 18:8,10;29:22;30:21;35:16; 38:3;40:9;52:19;54:1;55:7, 21;56:19;57:18 2013 (1) 36:8 2016 (2) 5:1,1 2017 (4) 62:5,19;63:3,20 21st (1) 5:1 22nd (2) 4:17,23 23 (1) 8:3 24 (1) 8:3 24th (13) 5:17;7:6;8:12;9:7;11:2; 12:21;18:10;38:3;40:9; 52:18;53:23;55:7;57:18 29 (3) 7:8;8:2,4 29th (3) 8:21;10:9;11:18	20:21;21:5;24:20;31:19,22; 38:16,18,19;40:19;41:2,8; 42:2,9;43:13;44:9,18,23; 45:7,7,8,10,11,13,22 9:25 (1) 10:10 9th (2) 11:16,19
	2	3	
	2 (1) 39:20 2:30 (1) 40:9 2:39 (7) 40:19;42:22;43:10,11; 44:6;46:2,4 2:41 (2) 44:6;46:6 2:44 (1) 44:7 2:45 (2) 44:14;46:7 2:47 (1) 44:19 2:48 (3) 42:1;44:19,21 2:49 (1) 44:21 2:56 (2) 44:21;46:2 2:57 (3) 44:22;46:3,5 20 (3) 47:12;62:5;63:3 2004 (1) 4:13 2010 (3)	3 (3) 8:18,22;9:2 3:00 (2) 47:12,15 4 4 (2) 15:14;18:8 4:20 (2) 42:23;47:16 40 (1) 42:18 45 (1) 43:12 47:45 (1) 45:7 48 (1) 40:20 4th (1) 28:4 8 8 (1) 36:8 9 9 (29) 15:11,13;16:11;19:17,18;	
Y			
year (2) 4:17;32:14 yellow (4) 29:7,10,15,17 Yup (4) 13:14;17:23;31:7;43:1			
1			